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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

COUNTY OF NEVADA,
a political subdivision of the
State of California; THE PEOPLE
OF THE STATE OF CALIFORNIA,
acting by and through the COUNTY
OF NEVADA.

Plaintiffs.

VS.

AMERISOURCEBERGEN DRUG CORPORATION; CARDINAL HEALTH, INC.; McKESSON CORPORATION; PURDUE PHARMA L.P.; PURDUE PHARMA, INC.; THE PURDUE FREDERICK COMPANY, INC.; TEVA PHARMACEUTICAL INDUSTRIES, LTD.; TEVA PHARMACEUTICALS USA, INC.; CEPHALON, INC.; JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.; JANSSEN PHARMACEUTICA

Case No.: _____

**COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY
TRIAL**

(1) Public Nuisance;
 (2) Violations of Racketeer
 Influenced and Corrupt
 Organizations Act (RICO), 18
 U.S.C. § 1961 et seq.;
 (3) Violations of 18 U.S.C. § 1962
 et seq.;
 (4) Violations of the California
 False Advertising Act, Cal. Bus.
 & Prof. Code § 17500 et seq.;
 (5) Negligent Misrepresentation;
 (6) Fraud and Fraudulent
 Misrepresentation; and
 (7) Unjust Enrichment.

1 INC. n/k/a JANSSEN
2 PHARMACEUTICALS, INC.;
3 NORAMCO, INC.; ENDO HEALTH
4 SOLUTIONS INC.; ENDO
5 PHARMACEUTICALS, INC.;
6 ALLERGAN PLC f/k/a ACTAVIS
7 PLS; WATSON
8 PHARMACEUTICALS, INC. n/k/a
9 ACTAVIS, INC.; WATSON
10 LABORATORIES, INC.; ACTAVIS
11 LLC; ACTAVIS PHARMA, INC. f/k/a
12 WATSON PHARMA, INC.;
MALLINCKRODT PLC;
MALLINCKRODT LLC; INSYS
THERAPEUTICS, INC; CVS
HEALTH CORP.; THE KROGER CO.;
RITE AID OF MARYLAND, INC.;
THRIFTY PAYLESS, INC.;
WALGREENS BOOTS ALLIANCE,
INC.; and WAL-MART, INC.
13
14 Defendants.
15

Defendants.

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1 Plaintiffs, COUNTY OF NEVADA, and THE PEOPLE OF THE STATE
2 OF CALIFORNIA, acting by and through Nevada County Counsel, (collectively
3 “Plaintiffs”) bring this Complaint against Defendants Purdue Pharma L.P.; Purdue
4 Pharma, Inc.; The Purdue Frederick Company, Inc.; Teva Pharmaceutical
5 Industries, LTD.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Johnson &
6 Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals,
7 Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica Inc. n/k/a Janssen
8 Pharmaceuticals, Inc.; Noramco, Inc.; Endo Health Solutions, Inc.; Endo
9 Pharmaceuticals, Inc.; Allergan PLC f/k/a Actavis PLS; Watson Pharmaceuticals,
10 Inc. n/k/a Actavis, Inc.; Watson Laboratories, Inc.; Actavis, LLC; Actavis
11 Pharma, Inc. f/k/a Watson Pharma, Inc.; Mallinckrodt PLC; Mallinckrodt LLC;
12 Insys Therapeutics, Inc., McKesson Corporation; Cardinal Health, Inc.;
13 AmerisourceBergen Drug Corporation, CVS Health Corporation; The Kroger Co.;
14 Rite Aid of Maryland, Inc. d/b/a Rite Aid Mid-Atlantic Customer Support Center,
15 Inc.; Thrifty Payless, Inc.; Walgreens Boots Alliance, Inc. a/k/a Walgreen Co.,
16 and Wal-Mart Inc., f/k/a Wal-Mart Stores, Inc., (collectively “Defendants”) and
17 allege as follows:

18 **I. INTRODUCTION**

19 1. Plaintiffs bring this civil action to eliminate the hazard to public
20 health and safety caused by the opioid epidemic, to abate the nuisance caused
21 thereby, and to recoup monies that have been spent and will be spent because of
22 Defendants’ false, deceptive and unfair marketing and/or unlawful diversion of
23 prescription opioids.¹ Such economic damages were foreseeable to Defendants
24 and were sustained because of Defendants’ intentional and/or unlawful actions
25 and omissions.

26
27
28 ¹ As used herein, the term “opioid” refers to the entire family of opiate drugs
including natural, synthetic and semi-synthetic opiates.

2. Opioid analgesics are widely diverted and improperly used, and the widespread abuse of opioids has resulted in a national epidemic of opioid overdose deaths and addictions.²

3. The opioid epidemic is “directly related to the increasingly widespread misuse of powerful opioid pain medications.”³

4. Plaintiffs bring this suit against the manufacturers of prescription opioids. The manufacturers aggressively pushed highly addictive, dangerous opioids, falsely representing to doctors that patients would only rarely succumb to drug addiction. These pharmaceutical companies aggressively advertised to and persuaded doctors to prescribe highly addictive, dangerous opioids, turning patients into drug addicts for their own corporate profit. Such actions were intentional and/or unlawful.

5. Plaintiffs also bring this suit against the wholesale distributors of these highly addictive drugs. The distributors and manufacturers intentionally and/or unlawfully breached their legal duties under federal and state law to monitor, detect, investigate, refuse and report suspicious orders of prescription opiates.

II. PARTIES

A. PLAINTIFFS.

6. Plaintiffs, THE PEOPLE OF THE STATE OF CALIFORNIA (“The People”), acting by and through Nevada County Counsel Alison Barratt-Green, and NEVADA COUNTY, CALIFORNIA, (“The County”), are authorized to bring the causes of action brought herein. The County is a body corporate and

² See Nora D. Volkow & A. Thomas McLellan, *Opioid Abuse in Chronic Pain—Misconceptions and Mitigation Strategies*, 374 N. Eng. J. Med. 1253 (2016).

³ See Robert M. Califf et al., *A Proactive Response to Prescription Opioid Abuse*, 374 N. Eng. J. Med. 1480 (2016).

1 politic of the State of California. Cal. Gov't Code § 23003. The County is
2 authorized to bring this action. Cal. Gov't Code § 23004(a).

3 7. The County is responsible for the public health, safety and welfare of
4 its citizens.

5 8. The County declares, on information and belief, that opioid abuse,
6 addiction, morbidity and mortality have created a serious public health and safety
7 crisis, and is a public nuisance, and that the diversion of legally produced
8 controlled substances into the illicit market causes or contributes to this public
9 nuisance.

10 9. The distribution and diversion of opioids into California ("the
11 State"), and into Nevada County and surrounding areas (collectively, "Plaintiffs'
12 Community"), created the foreseeable opioid crisis and opioid public nuisance for
13 which Plaintiffs here seek relief.

14 10. Plaintiffs directly and foreseeably sustained all economic damages
15 alleged herein. Defendants' conduct has exacted a financial burden for which the
16 Plaintiffs seek relief. Categories of past and continuing sustained damages
17 include, *inter alia*: (1) costs for providing medical care, additional therapeutic,
18 and prescription drug purchases, and other treatments for patients suffering from
19 opioid-related addiction or disease, including overdoses and deaths; (2) costs for
20 providing treatment, counseling, and rehabilitation services; (3) costs for
21 providing treatment of infants born with opioid-related medical conditions; (4)
22 costs associated with law enforcement and public safety relating to the opioid
23 epidemic; (5) costs associated with providing care for children whose parents
24 suffer from opioid-related disability or incapacitation and (6) costs associated with
25 The County having to repair and remake its infrastructure, property and systems
26 that have been damaged by Defendants' actions, including, *inter alia*, its property
27 and systems to treat addiction and abuse, to respond to and manage an elevated
28 level of crime, to treat injuries, and to investigate and process deaths in Plaintiffs'

1 Community. These damages have been suffered, and continue to be suffered,
2 directly by the Plaintiffs.

3 11. Plaintiffs also seek the means to abate the epidemic created by
4 Defendants' wrongful and/or unlawful conduct.

5 12. The People have standing to bring an action for the opioid epidemic
6 nuisance created by Defendants. Cal. Civ. Proc. Code § 731 ("A civil action may
7 be brought in the name of the people of the State of California to abate a public
8 nuisance, as defined in Section 3480 of the Civil Code, by the . . . county counsel
9 of any county in which the nuisance exists.").

10 13. The County has standing to bring an action for damages incurred to
11 its property by the public nuisance created by Defendants. Cal. Civ. Proc. Code §
12 731 ("An action may be brought by any person whose property is injuriously
13 affected, . . . and by the judgment in that action the nuisance may be enjoined or
14 abated as well as damages recovered therefor.").

15 14. The People have standing to bring this claim for injunctive relief and
16 civil penalties under the California False Advertising Act. Cal. Bus. & Prof. Code
17 §§ 17535, 17536.

18 15. The County has standing to recover damages incurred as a result of
19 Defendants' actions and omissions. Cal. Gov't Code § 23004(a). The County has
20 standing to bring claims under the federal RICO statute, pursuant to 18 U.S.C. §
21 1961(3) ("persons" include entities which can hold legal title to property) and 18
22 U.S.C. § 1964 ("persons" have standing).

23 **B. DEFENDANTS.**

24 **1. Manufacturer Defendants.**

25 16. The Manufacturer Defendants are defined below. At all relevant
26 times, the Manufacturer Defendants have packaged, distributed, supplied, sold,
27 placed into the stream of commerce, labeled, described, marketed, advertised,
28 promoted and purported to warn or purported to inform prescribers and users

1 regarding the benefits and risks associated with the use of the prescription opioid
2 drugs. The Manufacturer Defendants, at all times, have manufactured and sold
3 prescription opioids without fulfilling their legal duty to prevent diversion and
4 report suspicious orders.

5 17. PURDUE PHARMA L.P. is a limited partnership organized under
6 the laws of Delaware. PURDUE PHARMA INC. is a New York corporation with
7 its principal place of business in Stamford, Connecticut, and THE PURDUE
8 FREDERICK COMPANY, INC. is a Delaware corporation with its principal
9 place of business in Stamford, Connecticut (collectively, “Purdue”).

10 18. Purdue manufactures, promotes, sells, and distributes opioids such as
11 OxyContin, MS Contin, Dilaudid/Dilaudid HP, Butrans, Hysingla ER, and
12 Targiniq ER in the United States. OxyContin is Purdue’s best-selling opioid.
13 Since 2009, Purdue’s annual nationwide sales of OxyContin have fluctuated
14 between \$2.47 billion and \$2.99 billion, up four-fold from its 2006 sales of \$800
15 million. OxyContin constitutes roughly 30% of the entire market for analgesic
16 drugs (painkillers).

17 19. CEPHALON, INC. is a Delaware corporation with its principal place
18 of business in Frazer, Pennsylvania. TEVA PHARMACEUTICAL
19 INDUSTRIES, LTD. (“Teva Ltd.”) is an Israeli corporation with its principal
20 place of business in Petah Tikva, Israel. In 2011, Teva Ltd. acquired Cephalon,
21 Inc. TEVA PHARMACEUTICALS USA, INC. (“Teva USA”) is a Delaware
22 corporation and is a wholly owned subsidiary of Teva Ltd. in Pennsylvania. Teva
23 USA acquired Cephalon in October 2011.

24 20. Cephalon, Inc. manufactures, promotes, sells, and distributes opioids
25 such as Actiq and Fentora in the United States. Actiq has been approved by the
26 FDA only for the “management of breakthrough cancer pain in patients 16 years
27 and older with malignancies who are already receiving and who are tolerant to
28

1 around-the-clock opioid therapy for the underlying persistent cancer pain.”⁴
 2 Fentora has been approved by the FDA only for the “management of breakthrough
 3 pain in cancer patients 18 years of age and older who are already receiving and
 4 who are tolerant to around-the-clock opioid therapy for their underlying persistent
 5 cancer pain.”⁵ In 2008, Cephalon pled guilty to a criminal violation of the Federal
 6 Food, Drug and Cosmetic Act for its misleading promotion of Actiq and two other
 7 drugs, and agreed to pay \$425 million.⁶

8 21. Teva Ltd., Teva USA, and Cephalon, Inc. work together closely to
 9 market and sell Cephalon products in the United States. Teva Ltd. conducts all
 10 sales and marketing activities for Cephalon in the United States through Teva
 11 USA and has done so since its October 2011 acquisition of Cephalon. Teva Ltd.
 12 and Teva USA hold out Actiq and Fentora as Teva products to the public. Teva
 13 USA sells all former Cephalon branded products through its “specialty medicines”
 14 division. The FDA-approved prescribing information and medication guide, which
 15 is distributed with Cephalon opioids, discloses that the guide was submitted by
 16 Teva USA, and directs physicians to contact Teva USA to report adverse events.

17 22. All of Cephalon’s promotional websites, including those for Actiq
 18 and Fentora, display Teva Ltd.’s logo.⁷ Teva Ltd.’s financial reports list
 19 Cephalon’s and Teva USA’s sales as its own, and its year-end report for 2012 –
 20 the year immediately following the Cephalon acquisition – attributed a 22%

21
 22 ⁴ *Highlights of Prescribing Information, ACTIQ® (fentanyl citrate) oral*
 23 *transmucosal lozenge, CII* (2009),
https://www.accessdata.fda.gov/drugsatfda_docs/label/2009/020747s030lbl.pdf.

24 ⁵ *Highlights of Prescribing Information, FENTORA® (fentanyl citrate) buccal*
 25 *tablet, CII* (2011),
https://www.accessdata.fda.gov/drugsatfda_docs/label/2012/021947s015lbl.pdf.

26 ⁶ Press Release, U.S. Dep’t of Justice, Biopharmaceutical Company, Cephalon, to
 27 Pay \$425 Million & Enter Plea to Resolve Allegations of Off-Label Marketing
 28 (Sept. 29, 2008), <https://www.justice.gov/archive/opa/pr/2008/September/08-civ-860.html>.

⁷ E.g., ACTIQ, <http://www.actiq.com/> (displaying logo at bottom-left) (last visited Jan. 16, 2018).

1 increase in its specialty medicine sales to “the inclusion of a full year of
 2 Cephalon’s specialty sales,” including *inter alia* sales of Fentora®.⁸ Through
 3 interrelated operations like these, Teva Ltd. operates in the United States through
 4 its subsidiaries Cephalon and Teva USA. The United States is the largest of Teva
 5 Ltd.’s global markets, representing 53% of its global revenue in 2015, and, were it
 6 not for the existence of Teva USA and Cephalon, Inc., Teva Ltd. would conduct
 7 those companies’ business in the United States itself. Upon information and
 8 belief, Teva Ltd. directs the business practices of Cephalon and Teva USA, and
 9 their profits inure to the benefit of Teva Ltd. as controlling shareholder. Teva
 10 Pharmaceutical Industries, Ltd., Teva Pharmaceuticals USA, Inc., and Cephalon,
 11 Inc. are referred to as “Cephalon.”

12 23. JANSSEN PHARMACEUTICALS, INC. is a Pennsylvania
 13 corporation with its principal place of business in Titusville, New Jersey, and is a
 14 wholly owned subsidiary of JOHNSON & JOHNSON (J&J), a New Jersey
 15 corporation with its principal place of business in New Brunswick, New Jersey.
 16 NORAMCO, INC. (“Noramco”) is a Delaware company headquartered in
 17 Wilmington, Delaware and was a wholly owned subsidiary of J&J until July 2016.
 18 ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., now known as
 19 JANSSEN PHARMACEUTICALS, INC., is a Pennsylvania corporation with its
 20 principal place of business in Titusville, New Jersey. JANSSEN
 21 PHARMACEUTICA INC., now known as JANSSEN PHARMACEUTICALS,
 22 INC., is a Pennsylvania corporation with its principal place of business in
 23 Titusville, New Jersey. J&J is the only company that owns more than 10% of
 24 Janssen Pharmaceuticals’ stock, and corresponds with the FDA regarding
 25 Janssen’s products. Upon information and belief, J&J controls the sale and
 26

27 28 ⁸ Teva Ltd., Annual Report (Form 20-F) 62 (Feb. 12, 2013),
 http://annualreports.com/HostedData/AnnualReportArchive/t/NASDAQ_TEVA_2
 012.pdf.

1 development of Janssen Pharmaceuticals' drugs and Janssen's profits inure to
2 J&J's benefit. Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen
3 Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc., Noramco, and J&J are
4 referred to as "Janssen."

5 24. Janssen manufactures, promotes, sells, and distributes drugs in the
6 United States, including the opioid Duragesic (fentanyl). Before 2009, Duragesic
7 accounted for at least \$1 billion in annual sales. Until January 2015, Janssen
8 developed, marketed, and sold the opioids Nucynta (tapentadol) and Nucynta ER.
9 Together, Nucynta and Nucynta ER accounted for \$172 million in sales in 2014.

10 25. ENDO HEALTH SOLUTIONS INC. is a Delaware corporation with
11 its principal place of business in Malvern, Pennsylvania. ENDO
12 PHARMACEUTICALS INC. is a wholly owned subsidiary of Endo Health
13 Solutions Inc. and is a Delaware corporation with its principal place of business in
14 Malvern, Pennsylvania. Endo Health Solutions Inc. and Endo Pharmaceuticals
15 Inc. are referred to as "Endo."

16 26. Endo develops, markets, and sells prescription drugs, including the
17 opioids Opana/Opana ER, Percodan, Percocet, and Zydome, in the United States.
18 Opioids made up roughly \$403 million of Endo's overall revenues of \$3 billion in
19 2012. Opana ER yielded \$1.15 billion in revenue from 2010 and 2013, and it
20 accounted for 10% of Endo's total revenue in 2012. Endo also manufactures and
21 sells generic opioids such as oxycodone, oxymorphone, hydromorphone, and
22 hydrocodone products in the United States, by itself and through its subsidiary,
23 Qualitest Pharmaceuticals, Inc.

24 27. ALLERGAN PLC is a public limited company incorporated in
25 Ireland with its principal place of business in Dublin, Ireland. ACTAVIS PLC
26 acquired ALLERGAN PLC in March 2015, and the combined company changed
27 its name to ALLERGAN PLC in January 2013. Before that, WATSON
28 PHARMACEUTICALS, INC. acquired ACTAVIS, INC. in October 2012, and

1 the combined company changed its name to Actavis, Inc. as of January 2013 and
 2 then ACTAVIS PLC in October 2013. WATSON LABORATORIES, INC. is a
 3 Nevada corporation with its principal place of business in Corona, California, and
 4 is a wholly-owned subsidiary of ALLERGAN PLC (f/k/a Actavis, Inc., f/k/a
 5 Watson Pharmaceuticals, Inc.). ACTAVIS PHARMA, INC. (f/k/a Actavis, Inc.) is
 6 a Delaware corporation with its principal place of business in New Jersey and was
 7 formerly known as WATSON PHARMA, INC. ACTAVIS LLC is a Delaware
 8 limited liability company with its principal place of business in Parsippany, New
 9 Jersey. Each of these defendants is owned by ALLERGAN PLC, which uses them
 10 to market and sell its drugs in the United States. Upon information and belief,
 11 ALLERGAN PLC exercises control over these marketing and sales efforts and
 12 profits from the sale of Allergan/Actavis products ultimately inure to its benefit.
 13 ALLERGAN PLC, ACTAVIS PLC, ACTAVIS, Inc., Actavis LLC, Actavis
 14 Pharma, Inc., Watson Pharmaceuticals, Inc., Watson Pharma, Inc., and Watson
 15 Laboratories, Inc. are referred to as "Actavis."

16 28. Actavis manufactures, promotes, sells, and distributes opioids,
 17 including the branded drugs Kadian and Norco, a generic version of Kadian, and
 18 generic versions of Duragesic and Opana, in the United States. Actavis acquired
 19 the rights to Kadian from King Pharmaceuticals, Inc. on December 30, 2008, and
 20 began marketing Kadian in 2009.

21 29. MALLINCKRODT, PLC is an Irish public limited company
 22 headquartered in Staines-upon-Thames, United Kingdom, with its U.S.
 23 headquarters in St. Louis, Missouri. MALLINCKRODT, LLC is a limited liability
 24 company organized and existing under the laws of the State of Delaware.
 25 Mallinckrodt, LLC is a wholly owned subsidiary of Mallinckrodt, PLC.
 26 Mallinckrodt, PLC and Mallinckrodt, LLC are referred to as "Mallinckrodt."

27 30. Mallinckrodt manufactures, markets, and sells drugs in the United
 28 States including generic oxycodone, of which it is one of the largest

1 manufacturers. In July 2017 Mallinckrodt agreed to pay \$35 million to settle
2 allegations brought by the Department of Justice that it failed to detect and notify
3 the DEA of suspicious orders of controlled substances.

4 31. INSYS THERAPEUTICS, INC. is a Delaware corporation with its
5 principal place of business in Chandler, Arizona. Insys's principal product and
6 source of revenue is Subsys.

7 32. Insys made thousands of payments to physicians nationwide,
8 including in the State, ostensibly for activities including participating on speakers'
9 bureaus, providing consulting services, assisting in post-marketing safety
10 surveillance and other services, but in fact to deceptively promote and maximize
11 the use of opioids.

12 33. Subsys is a transmucosal immediate-release formulation (TIRF) of
13 fentanyl, contained in a single-dose spray device intended for oral, under the
14 tongue administration. Subsys was approved by the FDA solely for the treatment
15 of breakthrough cancer pain.

16 34. In 2016, Insys made approximately \$330 million in net revenue from
17 Subsys. Insys promotes, sells, and distributes Subsys throughout the United
18 States, the County, and Plaintiffs' Community.

19 35. Insys's founder and owner was recently arrested and charged, along
20 with other Insys executives, with multiple felonies in connection with an alleged
21 conspiracy to bribe practitioners to prescribe Subsys and defraud insurance
22 companies. Other Insys executives and managers were previously indicted.

23 **2. Distributor Defendants.**

24 36. The Distributor Defendants also are defined below. At all relevant
25 times, the Distributor Defendants have distributed, supplied, sold, and placed into
26 the stream of commerce the prescription opioids, without fulfilling the
27 fundamental duty of wholesale drug distributors to detect and warn of diversion of
28 dangerous drugs for non-medical purposes. The Distributor Defendants

1 universally failed to comply with federal and/or state law. The Distributor
2 Defendants are engaged in “wholesale distribution,” as defined under state and
3 federal law. Plaintiffs allege the unlawful conduct by the Distributor Defendants is
4 responsible for the volume of prescription opioids plaguing Plaintiffs’
5 Community.

6 37. McKESSON CORPORATION (“McKesson”) at all relevant times,
7 operated as a licensed distributor in California, licensed by the California State
8 Board of Pharmacy and holding both wholesaler and out of state wholesaler
9 distributor licenses. McKesson is a Delaware corporation. McKesson has its
10 principal place of business located in San Francisco, California. McKesson
11 operates distribution centers in Chino, Fullerton, Sacramento and Visalia,
12 California.

13 38. CARDINAL HEALTH, INC. (“Cardinal”) at all relevant times,
14 operated as a licensed distributor in California, licensed by the California State
15 Board of Pharmacy and holding both wholesaler and out of state wholesaler
16 distributor licenses. Cardinal’s principal office is located in Dublin, Ohio.
17 Cardinal operates a distribution center in Sacramento, California.

18 39. AMERISOURCEBERGEN DRUG CORPORATION
19 (“AmerisourceBergen”) at all relevant times, operated as a licensed distributor in
20 California, licensed by the California State Board of Pharmacy and holding both
21 wholesaler and out of state wholesaler distributor licenses. AmerisourceBergen is
22 a Delaware corporation and its principal place of business is located in
23 Chesterbrook, Pennsylvania.

24 40. Defendant CVS HEALTH CORPORATION is a Delaware
25 corporation with its principal place of business in Rhode Island. CVS Health
26 Corporation conducts business as a licensed wholesale distributor under the
27 following named business entities: CVS Indiana, L.L.C.; CVS Orlando FL
28 Distribution; CVS Pharmacy, Inc.; CVS RX Services, Inc, d/b/a CVS Pharmacy

1 Distribution Center; CVS TN Distribution, LLC ; and CVS VERO FL
2 Distribution, L.L.C (collectively “CVS”). At all times relevant to this Complaint,
3 CVS distributed prescription opioids throughout the United States, including in
4 the State and the County and Plaintiffs’ Community specifically. At all relevant
5 times, this Defendant operated as a licensed distributor in California, licensed by
6 the California State Board of Pharmacy.

7 41. Defendant THE KROGER CO. is an Ohio corporation with
8 headquarters in Cincinnati, OH. Kroger operates 2,268 pharmacies in the United
9 States, including in California. The Kroger Co. conducts business as a licensed
10 wholesale distributor under the following named business entities: Kroger Limited
11 Partnership I and Kroger Limited Partnership II (collectively “Kroger”). At all
12 times relevant to this Complaint, Kroger distributed and dispensed prescription
13 opioids throughout the United States, including in California and Plaintiffs’
14 Community specifically. At all relevant times, this Defendant operated licensed
15 pharmacies in California, licensed by the California State Board of Pharmacy.

16 42. Defendant RITE AID OF MARYLAND, INC., d/b/a Rite Aid Mid-
17 Atlantic Customer Support Center, Inc. is a Maryland corporation with its
18 principal office located in Camp Hill, Pennsylvania and is a subsidiary of Rite Aid
19 Corporation. Defendant THRIFTY PAYLESS, INC. is a California corporation
20 with its principal office in located in Camp Hill, Pennsylvania and is a subsidiary
21 of Rite Aid Corporation. Rite Aid of Maryland, Inc., d/b/a as Rite Aid Mid-
22 Atlantic Customer Support Center, Inc. and Thrifty Payless, Inc. are referred to as
23 “Rite Aid.” At all times relevant to this Complaint, Rite Aid distributed
24 prescription opioids throughout the United States, including in the State, the
25 County and Plaintiffs’ Community specifically. Rite Aid of Maryland, Inc., d/b/a
26 Rite Aid Mid-Atlantic Customer Support Center, Inc. conducts business as a
27 licensed wholesale distributor under the name Rite Aid Mid-Atlantic Customer
28 Support Center and at all relevant times, operated as a licensed distributor in

1 California, licensed by the California State of Pharmacy. Thrifty Payless, Inc.
2 conducts business as a licensed wholesale distributor and at all relevant times,
3 operated as a licensed distributor in California, licensed by the California State of
4 Pharmacy.

5 43. Defendant WALGREENS BOOTS ALLIANCE, INC., also known
6 as Walgreen Co. (“Walgreens”) is a Delaware corporation with its principal place
7 of business in Illinois. Walgreens Boots Alliance Inc. conducts business as a
8 licensed wholesale distributor under the following named business entities:
9 Walgreen Co.; Walgreen Eastern Co., Inc.; Walgreen Arizona Drug Co.
10 (collectively “Walgreens”). At all times relevant to this Complaint, Walgreens
11 distributed prescription opioids throughout the United States, including in the
12 State, the County and Plaintiffs’ Community specifically. At all relevant times,
13 this Defendant operated as a licensed distributor in California, licensed by the
14 California State Board of Pharmacy.

15 44. Defendant WAL-MART INC., formerly known as Wal-Mart Stores,
16 Inc. (“Wal-Mart”), is a Delaware corporation with its principal place of business
17 in Arkansas. At all times relevant to this Complaint, Wal-Mart distributed
18 prescription opioids throughout the United States, including in the State, the
19 County and Plaintiffs’ Community specifically. Wal-Mart Stores, Inc. conducts
20 business as a licensed wholesale distributor under the following named business
21 entities: Wal-Mart Warehouse #28; Wal-Mart Warehouse #6045 aka Wal-Mart
22 Warehouse #45; Wal-Mart Warehouse # 6046 aka Wal-Mart Warehouse #46
23 (“collectively “Wal-Mart”). At all relevant times, this Defendant operated as a
24 licensed distributor in California, licensed by the California State Board of
25 Pharmacy.

26 45. Collectively, Defendants CVS, Kroger, Rite Aid, Walgreens, Wal-
27 Mart are referred to as “National Retail Pharmacies.” Cardinal, McKesson,
28

1 AmerisourceBergen, and the National Retail Pharmacies are collectively referred
2 to as the “Distributor Defendants.”

3 46. Defendants include the above referenced entities as well as their
4 predecessors, successors, affiliates, subsidiaries, partnerships and divisions to the
5 extent that they are engaged in the manufacture, promotion, distribution, sale
6 and/or dispensing of opioids.

III. JURISDICTION & VENUE

8 47. This Court has subject matter jurisdiction under 28 U.S.C. § 1331
9 based upon the federal claims asserted under the Racketeer Influenced and
10 Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* (“RICO”). This Court has
11 supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. §
12 1367 because those claims are so related to Plaintiffs’ federal claims that they
13 form part of the same case or controversy.

14 48. This Court has personal jurisdiction over Defendants because they
15 conduct business in the State, purposefully direct or directed their actions toward
16 the State, some or all consented to be sued in the State by registering an agent for
17 service of process, they consensually submitted to the jurisdiction of the State
18 when obtaining a manufacturer or distributor license, and because they have the
19 requisite minimum contacts with the State necessary to constitutionally permit the
20 Court to exercise jurisdiction.

21 49. This Court also has personal jurisdiction over all of the defendants
22 under 18 U.S.C. § 1965(b). This Court may exercise nation-wide jurisdiction over
23 the named Defendants where the “ends of justice” require national service and
24 Plaintiffs demonstrate national contacts. Here, the interests of justice require that
25 Plaintiffs be allowed to bring all members of the nationwide RICO enterprise
26 before the court in a single trial. *See, e.g., Iron Workers Local Union No. 17*
27 *Insurance Fund v. Philip Morris Inc.*, 23 F. Supp. 2d 796, 803 (N.D. Ohio 1998)
28 (citing *LaSalle National Bank v. Arroyo Office Plaza, Ltd.*, 1988 WL 23824, *2

1 (N.D. Ill. Mar 10, 1988); *Butcher's Union Local No. 498 v. SDC Invest., Inc.*, 788
2 F.2d 535, 539 (9th Cir. 1986)).

3 50. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 18
4 U.S.C. §1965 because a substantial part of the events or omissions giving rise to
5 the claim occurred in this District and each Defendant transacted affairs and
6 conducted activity that gave rise to the claim of relief in this District. 28 U.S.C. §
7 1391(b); 18 U.S.C. §1965(a).

8 **IV. FACTUAL BACKGROUND**

9 **A. THE OPIOID EPIDEMIC.**

10 **1. The National Opioid Epidemic.**

11 51. The past two decades have been characterized by increasing abuse
12 and diversion of prescription drugs, including opioid medications, in the United
13 States.⁹

14 52. Prescription opioids have become widely prescribed. By 2010,
15 enough prescription opioids were sold to medicate every adult in the United States
16 with a dose of 5 milligrams of hydrocodone every 4 hours for 1 month.¹⁰

17 53. By 2011, the U.S. Department of Health and Human Resources,
18 Centers for Disease Control and Prevention, declared prescription painkiller
19 overdoses at epidemic levels. The News Release noted:

- 20 a. The death toll from overdoses of prescription painkillers has more
21 than tripled in the past decade.
22 b. More than 40 people die every day from overdoses involving narcotic
23 pain relievers like hydrocodone (Vicodin), methadone, oxycodone
(OxyContin), and oxymorphone (Opana).
24 c. Overdoses involving prescription painkillers are at epidemic levels
25 and now kill more Americans than heroin and cocaine combined.

26 ⁹ See Richard C. Dart et al., Trends in Opioid Analgesic Abuse and Mortality in the
27 United States, 372 N. Eng. J. Med. 241 (2015).

28 ¹⁰ Katherine M. Keyes et al., Understanding the Rural-Urban Differences in
Nonmedical Prescription Opioid Use and Abuse in the United States, 104 Am. J.
Pub. Health e52 (2014).

- 1 d. The increased use of prescription painkillers for nonmedical reasons,
2 along with growing sales, has contributed to a large number of
3 overdoses and deaths. In 2010, 1 in every 20 people in the United
4 States age 12 and older—a total of 12 million people—reported using
5 prescription painkillers non-medically according to the National
6 Survey on Drug Use and Health. Based on the data from the Drug
7 Enforcement Administration, sales of these drugs to pharmacies and
8 health care providers have increased by more than 300 percent since
9 1999.
- 10 e. Prescription drug abuse is a silent epidemic that is stealing thousands
11 of lives and tearing apart communities and families across America.
- 12 f. Almost 5,500 people start to misuse prescription painkillers every
13 day.¹¹

14 54. The number of annual opioid prescriptions written in the United
15 States is now roughly equal to the number of adults in the population.¹²

16 55. Many Americans are now addicted to prescription opioids, and the
17 number of deaths due to prescription opioid overdose is unacceptable. In 2016,
18 drug overdoses killed roughly 64,000 people in the United States, an increase of
19 more than 22 percent over the 52,404 drug deaths recorded the previous year.¹³

20 56. Moreover, the CDC has identified addiction to prescription pain
21 medication as the strongest risk factor for heroin addiction. People who are
22 addicted to prescription opioid painkillers are forty times more likely to be
23 addicted to heroin.¹⁴

24 57. Heroin is pharmacologically similar to prescription opioids. The
25 majority of current heroin users report having used prescription opioids non-

26 ¹¹ See Press Release, Ctrs. for Disease Control and Prevention, U.S. Dep’t of
27 Health and Human Servs., Prescription Painkiller Overdoses at Epidemic Levels
28 (Nov. 1, 2011),
https://www.cdc.gov/media/releases/2011/p1101_flu_pain_killer_overdose.html.

29 ¹² See Robert M. Califf et al., *A Proactive Response to Prescription Opioid Abuse*,
30 374 N. Eng. J. Med. 1480 (2016).

31 ¹³ See Ctrs. for Disease Control and Prevention, U.S. Dep’t of Health and Human
32 Servs., Provisional Counts of Drug Overdose Deaths, (August 8, 2016),
https://www.cdc.gov/nchs/data/health_policy/monthly-drug-overdose-death-estimates.pdf.

33 ¹⁴ See Ctrs. for Disease Control and Prevention, U.S. Dep’t of Health and Human
34 Servs., *Today’s Heroin Epidemic*,
<https://www.cdc.gov/vitalsigns/heroin/index.html> (last updated July 7, 2015).

1 medically before they initiated heroin use. Available data indicates that the
 2 nonmedical use of prescription opioids is a strong risk factor for heroin use.¹⁵

3 58. The CDC reports that drug overdose deaths involving heroin
 4 continued to climb sharply, with heroin overdoses more than tripling in 4 years.
 5 This increase mirrors large increases in heroin use across the country and has been
 6 shown to be closely tied to opioid pain reliever misuse and dependence. ***Past***
 7 ***misuse of prescription opioids is the strongest risk factor for heroin initiation***
 8 ***and use,*** specifically among persons who report past-year dependence or abuse.
 9 The increased availability of heroin, combined with its relatively low price
 10 (compared with diverted prescription opioids) and high purity appear to be major
 11 drivers of the upward trend in heroin use and overdose.¹⁶

12 59. The societal costs of prescription drug abuse are “huge.”¹⁷

13 60. Across the nation, local governments are struggling with a
 14 pernicious, ever-expanding epidemic of opioid addiction and abuse. Every day,
 15 more than 90 Americans lose their lives after overdosing on opioids.¹⁸

16 61. The National Institute on Drug Abuse identifies misuse and addiction
 17 to opioids as “a serious national crisis that affects public health as well as social
 18 and economic welfare.”¹⁹ The economic burden of prescription opioid misuse
 19

20 ¹⁵ See Wilson M. Compton, Relationship Between Nonmedical Prescription-
 21 Opioid Use and Heroin, 374 N. Eng. J. Med. 154 (2016).

22 ¹⁶ See Rose A. Rudd et al., *Increases in Drug and Opioid Overdose Deaths—*
 23 *United States, 2000–2014*, 64 Morbidity & Mortality Wkly. Rep. 1378 (2016).

24 ¹⁷ See Amicus Curiae Brief of Healthcare Distribution Management Association in
 25 Support of Appellant Cardinal Health, Inc., *Cardinal Health, Inc. v. United States*
 26 *Dept. Justice*, No. 12-5061 (D.C. Cir. May 9, 2012), 2012 WL 1637016, at *10
 27 [hereinafter Brief of HDMA].

28 ¹⁸ Opioid Crisis, NIH, National Institute on Drug Abuse (available at
 https://www.drugabuse.gov/drugs-abuse/opioids/opioid-crisis, last visited Sept. 19,
 2017) (“Opioid Crisis, NIH”) (citing at note 1 Rudd RA, Seth P, David F, Scholl L,
 29 *Increases in Drug and Opioid-Involved Overdose Deaths — United States, 2010–*
2015, MMWR MORB MORTAL WKLY REP. 2016;65,
 doi:10.15585/mmwr.mm655051e1).

30 ¹⁹ Opioid Crisis, NIH.

1 alone is \$78.5 billion a year, including the costs of healthcare, lost productivity,
 2 addiction treatment, and criminal justice expenditures.²⁰

3 62. The U.S. opioid epidemic is continuing, and drug overdose deaths
 4 nearly tripled during 1999–2014. Among 47,055 drug overdose deaths that
 5 occurred in 2014 in the United States, 28,647 (60.9%) involved an opioid.²¹

6 63. The rate of death from opioid overdose has quadrupled during the
 7 past 15 years in the United States. Nonfatal opioid overdoses that require medical
 8 care in a hospital or emergency department have increased by a factor of six in the
 9 past 15 years.²²

10 64. Every day brings a new revelation regarding the depth of the opioid
 11 plague: just to name one example, the New York Times reported in September
 12 2017 that the epidemic, which now claims 60,000 lives a year, is now killing
 13 babies and toddlers because ubiquitous, deadly opioids are “everywhere” and
 14 mistaken as candy.²³

15 65. In 2016, the President of the United States declared an opioid and
 16 heroin epidemic.²⁴

17 66. The epidemic of prescription pain medication and heroin deaths is
 18 devastating families and communities across the country.²⁵ Meanwhile, the
 19
 20

21 ²⁰ *Id.* (citing at note 2 Florence CS, Zhou C, Luo F, Xu L, *The Economic Burden*
 22 *of Prescription Opioid Overdose, Abuse, and Dependence in the United States,*
 23 2013, MED CARE 2016;54(10):901-906, doi:10.1097/MLR.0000000000000625).

24 ²¹ See Rose A. Rudd et al., Increases in Drug and Opioid-Involved Overdose
 25 Deaths—United States, 2010–2015, 65 Morbidity & Mortality Wkly. Rep. 1445
 26 (2016).

27 ²² See Nora D. Volkow & A. Thomas McLellan, *Opioid Abuse in Chronic Pain—*
 28 *Misconceptions and Mitigation Strategies*, 374 N. Eng. J. Med. 1253 (2016).

29 ²³ Julie Turkewitz, ‘The Pills are Everywhere’: How the Opioid Crisis Claims Its
 30 Youngest Victims, N.Y. Times, Sept. 20, 2017 (“‘It’s a cancer,’ said [grandmother
 31 of dead one-year old], of the nation’s opioid problem, ‘with tendrils that are going
 32 everywhere.’”).

33 ²⁴ See Proclamation No. 9499, 81 Fed. Reg. 65,173 (Sept. 16, 2016) (proclaiming
 34 “Prescription Opioid and Heroin Epidemic Awareness Week”).

1 manufacturers and distributors of prescription opioids extract billions of dollars of
 2 revenue from the addicted American public while public entities experience
 3 hundreds of millions of dollars of injury – if not more – caused by the reasonably
 4 foreseeable consequences of the prescription opioid addiction epidemic.

5 67. The prescription opioid manufacturers and distributors, including the
 6 Defendants, have continued their wrongful, intentional, and unlawful conduct,
 7 despite their knowledge that such conduct is causing and/or contributing to the
 8 national, state, and local opioid epidemic.

9 **2. The California Opioid Epidemic.**

10 68. California has been especially ravaged by the national opioid crisis.

11 69. More people die each year from drug overdoses in California than in
 12 any other state.²⁶ The State's death rate has continued to climb, increasing by 30
 13 percent from 1999 to 2015, according to the Center for Disease Control (CDC).²⁷

14 70. In 2016, 1,925 Californians died due to prescription opioids.²⁸ This
 15 number is on par with other recent years: in 2015, 1,966 deaths in California were
 16 due just to prescription opioids (not including heroin); in 2014 that number was
 17 even higher at 2,024 prescription opioid deaths; and in 2013, 1,934 Californians
 18 died from a prescription opioid overdose.²⁹

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²⁵ See Presidential Memorandum – Addressing Prescription Drug Abuse and
 21 Heroin Use, 2015 Daily Comp. Pres. Doc. 743 (Oct. 21, 2015),
<https://www.gpo.gov/fdsys/pkg/DCPD-201500743/pdf/DCPD-201500743.pdf>.

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²⁶ Kristina Davis, “How California ranks in the nation’s opioid epidemic,” *The San
 23 Diego Union-Tribune* (Nov. 8, 2017) available at
<http://www.sandiegouniontribune.com/news/health/sd-me-opioid-conference-20171108-story.html> (last visited March 2, 2018).

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²⁷ Soumya Karlamangla, “California’s opioid death rate is among the national’s
 25 lowest. Experts aren’t sure why,” *The Los Angeles Times* (Oct. 27, 2017) available
 26 at <http://www.latimes.com/health/la-me-ln-california-opioids-20171026-htmlstory.html> (last visited March 2, 2018).

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²⁸ Davis, *supra*.

28

²⁹ California Department of Public Health, *California Opioid Overdose
 Surveillance Dashboard*, available at https://pdop.shinyapps.io/ODdash_v1/ (last
 visited March 2, 2018).

1 71. Of the 1,925 opioid-related deaths in California in 2016, fentanyl was
2 a factor in at least 234 of them.³⁰ This is an increase of 47 percent for 2016.³¹
3 Heroin-related deaths have risen by 67 percent in California since 2006.³²

4 72. The high number of deaths is due in part to the extraordinary number
5 of opioids prescribed in the State. Over 23.6 million prescriptions for opioids were
6 written in California in just 2016.³³

7 73. The California Department of Public Health tracks the number of
8 reported hospitalizations and emergency department visits due to prescription
9 opioids.³⁴ In 2015, the last year for which information is currently available,
10 California had 3,935 emergency department visits and 4,095 hospitalizations
11 related to prescription opioid overdoses (excluding heroin).³⁵ The numbers were
12 even higher in 2014, when 4,106 people visited the emergency department and
13 4,482 people were hospitalized due to prescription opioid abuse.³⁶ In 2013, there
14 were 3,964 emergency department visits and 4,344 hospitalizations for
15 prescription opioid overdoses.³⁷ When emergency visits and hospitalizations
16 include heroin, the numbers are even higher.³⁸

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19 ³⁰ Davis, *supra*.

20 ³¹ Karlamangla, *supra*.

21 ³² California Department of Public Health, *State of California Strategies to Address*
22 *Prescription Drug (Opioid) Misuse, Abuse, and Overdose Epidemic in California*
23 at 3 (June 2016), available at
<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/CDPH%20Document%20Library/Prescription%20Drug%20Overdose%20Program/CAOpioidPreventionStrategies4.17.pdf> (last visited March 2, 2018).

24 ³³ California Department of Public Health, *California Opioid Overdose*
25 *Surveillance Dashboard*, *supra*.

26 ³⁴ *Id.*

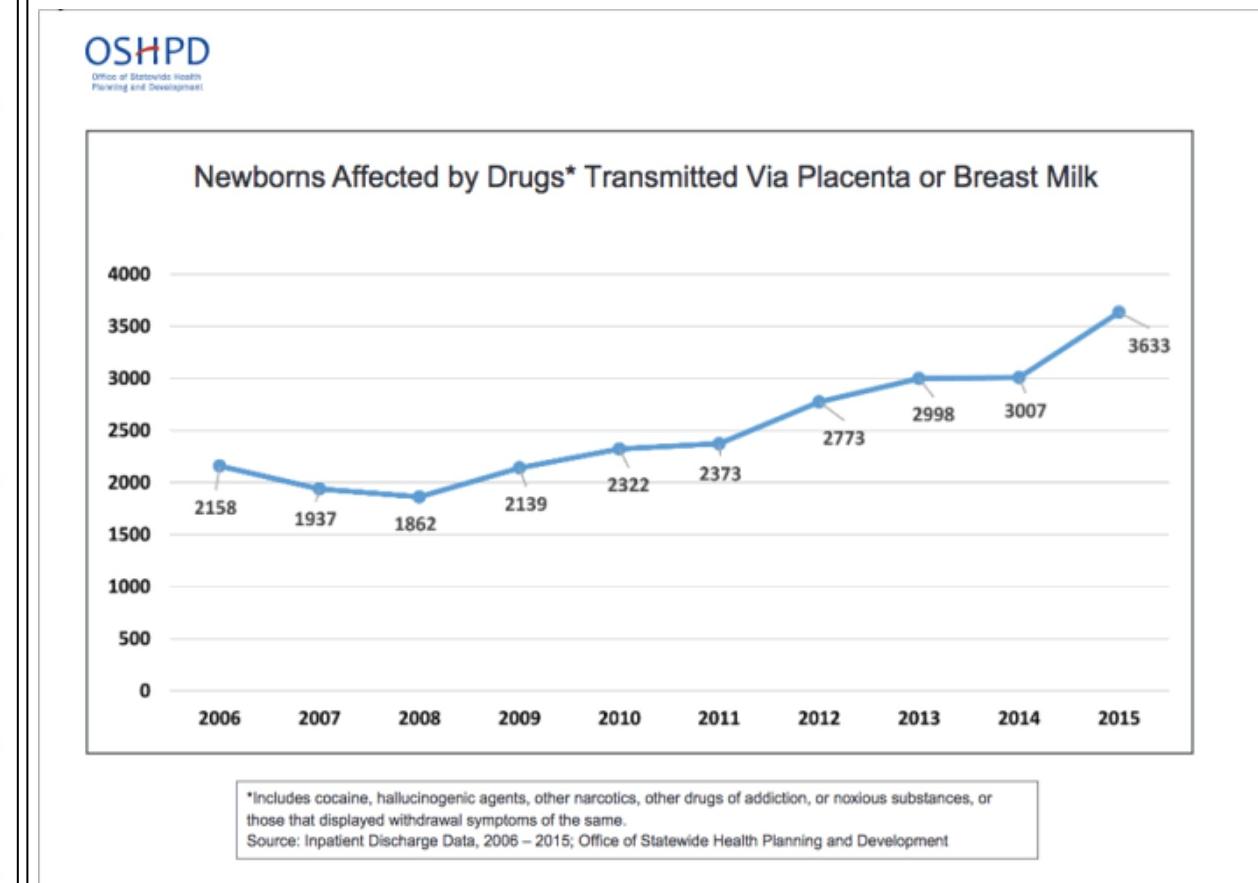
27 ³⁵ *Id.*

28 ³⁶ *Id.*

29 ³⁷ *Id.*

30 ³⁸ *Id.*

1 74. Neonatal Abstinence Syndrome (NAS), a collection of symptoms
2 newborn babies experience withdrawing from opioid medications taken by the
3 mother, has increased dramatically in California, with the rate of infants born with
4 NAS more than tripling from 2008 to 2013.³⁹ While the number of affected
5 newborns rose from 1,862 in 2008 to 3,007 in 2014, that number jumped by
6 another 21 percent in 2015.⁴⁰ This is despite a steady decline in the overall
7 number of birth in California during that same time.⁴¹



³⁹ California Child Welfare Co-Investment Partnership, *A Matter of Substance, Challenges and Responses to Parental Substance Use in Child Welfare*, at 5 (Summer 2017), available at http://www.chhs.ca.gov/Child%20Welfare/CCW_Co-Invest_Insights_DIGITAL_FINAL_053017.pdf (last visited March 2, 2018).

⁴⁰ Cheryl Clark, "Report Shows Spike in San Diego County Babies Born with Drugs in their Systems," *KPBS* (April 17, 2017), available at <http://www.kpbs.org/news/2017/apr/17/report-shows-spike-san-diego-county-babies-born-dr/> (last visited March 2, 2018).

28 | 41 *Id.*

1 75. Reports from California's Office of Statewide Health Planning,
 2 which collects data from licensed health care facilities, have shown a 95 percent
 3 increase between 2008 and 2015 of newborns affected by drugs transmitted via
 4 placenta or breast milk.⁴²

5 76. The opioid epidemic has also had an impact on crime in California.
 6 Pharmacy robberies have gone up by 163 percent in California over the last two
 7 years, according to the DEA. The DEA recorded 90 incidents in 2015, 154 in
 8 2016 and, through mid-November of 2017, that number had climbed to 237.⁴³
 9 Most perpetrators were after prescription opioids.⁴⁴ In addition, fentanyl seizures
 10 at California ports increased 266 percent in fiscal year 2017.⁴⁵

11 **3. The Opioid Epidemic in Plaintiffs' Community.**

12 77. The opioid epidemic is particularly devastating in Plaintiffs'
 13 Community.

14 78. In 2016, the County had an opioid overdose death rate of 9.8 per
 15 100,000 people.⁴⁶

16 79. From 2012 to 2014, the County suffered 69 deaths due to drug
 17 overdoses for a drug overdose mortality rate of 23 deaths per 100,000 residents.⁴⁷

19 ⁴² California Child Welfare Co-Investment Partnership, *supra*, at 3.

20 ⁴³ Ed Fletcher, "What's behind the spike in drug store robberies?" *The Sacramento*
 21 *Bee*, Dec. 8, 2017 (available at
<http://www.sacbee.com/news/local/crime/article188636384.html> (last visited
 22 March 2, 2018).

23 ⁴⁴ *Id.*

24 ⁴⁵ United State Department of Justice, The United States Attorney's Office,
 25 Southern District of California, *U.S. Attorney Appoints Opioid Coordinators* (Feb.
 8, 2018) available at <https://www.justice.gov/usao-sdca/pr/us-attorney-appoints-opioid-coordinators> (last visited March 2, 2018).

26 ⁴⁶ California Department of Public Health, *California Opioid Overdose*
 27 *Surveillance Dashboard*, available at https://pdop.shinyapps.io/ODdash_v1/ (last visited April 20, 2018) (Nevada County specific page).

28 ⁴⁷ County Health Rankings & Roadmaps, Drug overdose deaths, available at
<http://www.countyhealthrankings.org/app/california/2016/measure/factors/138/data> (last visited April 20, 2018).

1 80. Prescription opioids have also been responsible for a high rate of
 2 emergency department visits and hospitalizations in the County. In 2016, Nevada
 3 County had a rate of 17 emergency department visits due to opioid overdoses
 4 (excluding heroin) per 100,000 people, and 19 opioid overdose hospitalizations
 5 per 100,000 residents, which was the fourth highest rate in the State that year.⁴⁸

6 81. The CDC has tracked prescription rates per county in the United
 7 States, identifying the geographic “hotspots” for rates of opioid prescriptions.⁴⁹
 8 The CDC has calculated the geographic distribution at county levels of opioid
 9 prescriptions dispensed per 100 persons,⁵⁰ revealing that Nevada County has been
 10 a consistent hotspot over at least the past decade.

11 82. The CDC’s statistics prove that the opioid prescription rates in
 12 Nevada County have exceeded any legitimate medical, scientific, or industrial
 13 purpose. The overall opioid prescribing rate in 2016 was 66.5 prescriptions per
 14 100 people nationally and 44.8 in California.⁵¹ However, in Nevada County,
 15 California, the 2016 prescription rate was 83 per 100 people.⁵² This is down from
 16 the 2015 prescribing rate for Nevada County which was 86 per 100 people.⁵³

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 18
 19 ⁴⁸ California Department of Public Health, *California Opioid Overdose*
 20 *Surveillance Dashboard*, available at https://pdop.shinyapps.io/ODdash_v1/ (last
 visited April 20, 2018) (Nevada County specific page).

21 ⁴⁹ U.S. Prescribing Rate Maps, CDC, available at
 22 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 2017).

23 ⁵⁰ *Id.*

24 ⁵¹ *Id. See also* U.S. State Prescribing Rates, 2016, available at
<https://www.cdc.gov/drugoverdose/maps/rxstate2016.html> (last visited April 18,
 2018).

25 ⁵² U.S. County Prescribing Rates, 2016, (reporting for “Nevada, CA” here and
 26 below) CDC available at
<https://www.cdc.gov/drugoverdose/maps/rxcounty2016.html> (last visited April 18,
 2018).

27 ⁵³ U.S. County Prescribing Rates, 2015, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxcounty2015.html> (last visited April 18,
 2018).

1 83. Unfortunately, the 2015 and 2016 high rates of opioid prescriptions
 2 were not an aberration for Nevada County. Consistently, the opioid prescribing
 3 rates in Nevada County have been significantly greater than the national and state
 4 averages, and often are more than one prescription per person living in the
 5 County. Compared to a national average of 75.6 opioid prescriptions per 100
 6 people in 2014⁵⁴ and 52.7 in California,⁵⁵ the Nevada County opioid prescription
 7 rate was 97.4 per 100 people.⁵⁶ In 2013, the national average was 78.1 opioid
 8 prescriptions per 100 people,⁵⁷ but the opioid prescription rate in Nevada County
 9 was 105.3 per 100 people – more than one prescription for every man, woman and
 10 child in Nevada County.⁵⁸ Compared to a national average of 81.3 opioid
 11 prescriptions per 100 people in 2012,⁵⁹ the opioid prescription rate in Nevada
 12 County was 110 per 100 people that year.⁶⁰ In 2011, the national average was 80.9
 13 opioid prescriptions per 100 people,⁶¹ but the opioid prescription rate in Nevada
 14

15 ⁵⁴ U.S. Prescribing Rate Maps, CDC, available at
 16 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 2017).

17 ⁵⁵ U.S. State Prescribing Rates, 2014, CDC, available at
 18 <https://www.cdc.gov/drugoverdose/maps/rxstate2014.html> (last visited Dec. 11,
 2017).

19 ⁵⁶ U.S. County Prescribing Rates, 2014, CDC, available at
 20 <https://www.cdc.gov/drugoverdose/maps/rxcounty2014.html> (last visited April 18,
 2018).

21 ⁵⁷ U.S. Prescribing Rate Maps, CDC, available at
 22 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 2017).

23 ⁵⁸ U.S. County Prescribing Rates, 2013, CDC, available at
 24 <https://www.cdc.gov/drugoverdose/maps/rxcounty2013.html> (last visited April 18,
 2018).

25 ⁵⁹ U.S. Prescribing Rate Maps, CDC, available at
 26 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 2017).

27 ⁶⁰ U.S. County Prescribing Rates, 2012, CDC, available at
 28 <https://www.cdc.gov/drugoverdose/maps/rxcounty2012.html> (last visited April 18,
 2018).

29 ⁶¹ U.S. Prescribing Rate Maps, CDC, available at
 30 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 2017).

1 County was 115.4 per 100 people.⁶² Compared to a national average of 81.2
 2 opioid prescriptions per 100 people in 2010,⁶³ the Nevada County opioid
 3 prescription rate was 119.3 per 100 people – an all-time high for Nevada
 4 County.⁶⁴ In 2009, the national average was 79.5 opioid prescriptions per 100
 5 people,⁶⁵ but the rate in Nevada County was 111.8 per 100.⁶⁶ Compared to a
 6 national average of 78.2 opioid prescriptions per 100 people in 2008⁶⁷ and 55.1 in
 7 California,⁶⁸ the Nevada County rate was 104.8 per 100 people.⁶⁹ In 2007, the
 8 national average was 75.9 opioid prescriptions per 100 people,⁷⁰ but the Nevada
 9 County rate was 102.1 per 100 people.⁷¹ Compared to a national average of 72.4
 10
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12 ⁶² U.S. County Prescribing Rates, 2011, CDC, available at
 13 <https://www.cdc.gov/drugoverdose/maps/rxcounty2011.html> (last visited April 18,
 14 2018).

15 ⁶³ U.S. Prescribing Rate Maps, CDC, available at
 16 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 17 2017).

18 ⁶⁴ U.S. County Prescribing Rates, 2010, CDC, available at
 19 <https://www.cdc.gov/drugoverdose/maps/rxcounty2010.html> (last visited April 18,
 20 2018).

21 ⁶⁵ U.S. Prescribing Rate Maps, CDC, available at
 22 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 23 2017).

24 ⁶⁶ U.S. County Prescribing Rates, 2009, CDC, available at
 25 <https://www.cdc.gov/drugoverdose/maps/rxcounty2009.html> (last visited April 18,
 26 2018).

27 ⁶⁷ U.S. Prescribing Rate Maps, CDC, available at
 28 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,,
 29 2017).

30 ⁶⁸ U.S. State Prescribing Rates, 2008, CDC, available at
 31 <https://www.cdc.gov/drugoverdose/maps/rxstate2008.html> (last visited Dec. 11,
 32 2017).

33 ⁶⁹ U.S. County Prescribing Rates, 2008, CDC, available at
 34 <https://www.cdc.gov/drugoverdose/maps/rxcounty2008.html> (last visited April 18,
 35 2018).

36 ⁷⁰ U.S. Prescribing Rate Maps, CDC, available at
 37 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,,
 38 2017).

39 ⁷¹ U.S. County Prescribing Rates, 2007, CDC, available at
 40 <https://www.cdc.gov/drugoverdose/maps/rxcounty2007.html> (last visited April 18,
 41 2018).

1 opioid prescriptions per 100 people prescribed opioids in 2006,⁷² the Nevada
2 County rate was 101 per 100 people.⁷³

3 84. The sheer volume of these dangerously addictive drugs was destined
4 to create the present crisis of addiction, abuse, and overdose deaths.

5 **B. THE MANUFACTURER DEFENDANTS' FALSE, DECEPTIVE,
6 AND UNFAIR MARKETING OF OPIOIDS.**

7 85. The opioid epidemic did not happen by accident.

8 86. Before the 1990s, generally accepted standards of medical practice
9 dictated that opioids should only be used short-term for acute pain, pain relating to
10 recovery from surgery, or for cancer or palliative (end-of-life) care. Due to the
11 lack of evidence that opioids improved patients' ability to overcome pain and
12 function, coupled with evidence of greater pain complaints as patients developed
13 tolerance to opioids over time and the serious risk of addiction and other side
14 effects, the use of opioids for chronic pain was discouraged or prohibited. As a
15 result, doctors generally did not prescribe opioids for chronic pain.

16 87. Each Manufacturer Defendant has conducted, and has continued to
17 conduct, a marketing scheme designed to persuade doctors and patients that
18 opioids can and should be used for chronic pain, resulting in opioid treatment for a
19 far broader group of patients who are much more likely to become addicted and
20 suffer other adverse effects from the long-term use of opioids. In connection with
21 this scheme, each Manufacturer Defendant spent, and continues to spend, millions
22 of dollars on promotional activities and materials that falsely deny or trivialize the
23 risks of opioids while overstating the benefits of using them for chronic pain.

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26 ⁷² U.S. Prescribing Rate Maps, CDC, available at
27 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
28 2017).

29 ⁷³ U.S. County Prescribing Rates, 2006, CDC, available at
30 <https://www.cdc.gov/drugoverdose/maps/rxcounty2006.html> (last visited April 18,
31 2018).

1 88. The Manufacturer Defendants have made false and misleading
 2 claims, contrary to the language on their drugs' labels, regarding the risks of using
 3 their drugs that: (1) downplayed the serious risk of addiction; (2) created and
 4 promoted the concept of "pseudoaddiction" when signs of actual addiction began
 5 appearing and advocated that the signs of addiction should be treated with more
 6 opioids; (3) exaggerated the effectiveness of screening tools to prevent addiction;
 7 (4) claimed that opioid dependence and withdrawal are easily managed; (5) denied
 8 the risks of higher opioid dosages; and (6) exaggerated the effectiveness of
 9 "abuse-deterrant" opioid formulations to prevent abuse and addiction. The
 10 Manufacturer Defendants have also falsely touted the benefits of long-term opioid
 11 use, including the supposed ability of opioids to improve function and quality of
 12 life, even though there was no scientifically reliable evidence to support the
 13 Manufacturer Defendants' claims.

14 89. The Manufacturer Defendants have disseminated these common
 15 messages to reverse the popular and medical understanding of opioids and risks of
 16 opioid use. They disseminated these messages directly, through their sales
 17 representatives, in speaker groups led by physicians the Manufacturer Defendants
 18 recruited for their support of their marketing messages, and through unbranded
 19 marketing and industry-funded front groups.

20 90. The Manufacturer Defendants' efforts have been wildly successful.
 21 Opioids are now the most prescribed class of drugs. Globally, opioid sales
 22 generated \$11 billion in revenue for drug companies in 2010 alone; sales in the
 23 United States have exceeded \$8 billion in revenue annually since 2009.⁷⁴ In an
 24 open letter to the nation's physicians in August 2016, the then-U.S. Surgeon
 25

26 74 See Katherine Eban, *Oxycontin: Purdue Pharma's Painful Medicine*, Fortune,
 27 Nov. 9, 2011, <http://fortune.com/2011/11/09/oxycontin-purdue-pharma-painful-medicine/>; David Crow, *Drugmakers Hooked on \$10bn Opioid Habit*, Fin. Times, Aug. 10, 2016, <https://www.ft.com/content/f6e989a8-5dac-11e6-bb77-a121aa8abd95>.

1 General expressly connected this “urgent health crisis” to “heavy marketing of
2 opioids to doctors . . . [m]any of [whom] were even taught – incorrectly – that
3 opioids are not addictive when prescribed for legitimate pain.”⁷⁵ This epidemic
4 has resulted in a flood of prescription opioids available for illicit use or sale (the
5 supply), and a population of patients physically and psychologically dependent on
6 them (the demand). And when those patients can no longer afford or obtain
7 opioids from licensed dispensaries, they often turn to the street to buy prescription
8 opioids or even non-prescription opioids, like heroin.

9 91. The Manufacturer Defendants intentionally continued their conduct,
10 as alleged herein, with knowledge that such conduct was creating the opioid
11 nuisance and causing the harms and damages alleged herein.

12 **1. Each Manufacturer Defendant Used Multiple Avenues to
13 Disseminate Their False and Deceptive Statements about Opioids.**

14 92. The Manufacturer Defendants spread their false and deceptive
15 statements by marketing their branded opioids directly to doctors and patients in
16 and around the State, including in Plaintiffs’ Community. Defendants also
17 deployed seemingly unbiased and independent third parties that they controlled to
18 spread their false and deceptive statements about the risks and benefits of opioids
19 for the treatment of chronic pain throughout the State and Plaintiffs’ Community.

20 93. The Manufacturer Defendants employed the same marketing plans
21 and strategies and deployed the same messages in and around the State, including
22 in Plaintiffs’ Community, as they did nationwide. Across the pharmaceutical
23 industry, “core message” development is funded and overseen on a national basis
24 by corporate headquarters. This comprehensive approach ensures that the
25 Manufacturer Defendants’ messages are accurately and consistently delivered
26 across marketing channels – including detailing visits, speaker events, and

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28 ⁷⁵ Letter from Vivek H. Murthy, U.S. Surgeon General (Aug. 2016),
http://turnthetiderx.org/.

1 advertising – and in each sales territory. The Manufacturer Defendants consider
2 this high level of coordination and uniformity crucial to successfully marketing
3 their drugs.

4 94. The Manufacturer Defendants ensure marketing consistency
5 nationwide through national and regional sales representative training; national
6 training of local medical liaisons, the company employees who respond to
7 physician inquiries; centralized speaker training; single sets of visual aids, speaker
8 slide decks and sales training materials; and nationally coordinated advertising.
9 The Manufacturer Defendants’ sales representatives and physician speakers were
10 required to stick to prescribed talking points, sales messages, and slide decks, and
11 supervisors rode along with them periodically to both check on their performance
12 and compliance.

13 **a) Direct Marketing.**

14 95. The Manufacturer Defendants’ direct marketing of opioids generally
15 proceeded on two tracks. First, each Manufacturer Defendant conducted and
16 continues to conduct advertising campaigns touting the purported benefits of their
17 branded drugs. For example, upon information and belief, the Manufacturer
18 Defendants spent more than \$14 million on medical journal advertising of opioids
19 in 2011, nearly triple what they spent in 2001.

20 96. Many of the Manufacturer Defendants’ branded ads deceptively
21 portrayed the benefits of opioids for chronic pain. For example, Endo distributed
22 and made available on its website opana.com a pamphlet promoting Opana ER
23 with photographs depicting patients with physically demanding jobs like
24 construction worker, chef, and teacher, misleadingly implying that the drug would
25 provide long-term pain-relief and functional improvement. Upon information and
26 belief, Purdue also ran a series of ads, called “Pain vignettes,” for OxyContin in
27 2012 in medical journals. These ads featured chronic pain patients and
28 recommended OxyContin for each. One ad described a “54-year-old writer with

1 osteoarthritis of the hands” and implied that OxyContin would help the writer
2 work more effectively.

3 97. Second, each Manufacturer Defendant promoted the use of opioids
4 for chronic pain through “detailers” – sales representatives who visited individual
5 doctors and medical staff in their offices – and small-group speaker programs. The
6 Manufacturer Defendants have not corrected this misinformation. Instead, each
7 Defendant devoted massive resources to direct sales contacts with doctors. Upon
8 information and belief, in 2014 alone, the Manufacturer Defendants spent in
9 excess of \$168 million on detailing branded opioids to doctors, more than twice
10 what they spent on detailing in 2000.

11 98. The Manufacturer Defendants’ detailing to doctors is effective.
12 Numerous studies indicate that marketing impacts prescribing habits, with face-to-
13 face detailing having the greatest influence. Even without such studies, the
14 Manufacturer Defendants purchase, manipulate and analyze some of the most
15 sophisticated data available in any industry, data available from IMS Health
16 Holdings, Inc., to track, precisely, the rates of initial prescribing and renewal by
17 individual doctor, which in turn allows them to target, tailor, and monitor the
18 impact of their core messages. Thus, the Manufacturer Defendants know their
19 detailing to doctors is effective.

20 99. The Manufacturer Defendants’ detailers have been reprimanded for
21 their deceptive promotions. In March 2010, for example, the FDA found that
22 Actavis had been distributing promotional materials that “minimize[] the risks
23 associated with Kadian and misleadingly suggest[] that Kadian is safer than has
24 been demonstrated.” Those materials in particular “fail to reveal warnings
25 regarding potentially fatal abuse of opioids, use by individuals other than the
26 patient for whom the drug was prescribed.”⁷⁶

27
28

⁷⁶ Letter from Thomas Abrams, Dir., Div. of Drug Mktg., Advert., & Commc’ns,
U.S. Food & Drug Admin., to Doug Boothe, CEO, Actavis Elizabeth LLC (Feb.

b) Indirect Marketing.

100. The Manufacturer Defendants indirectly marketed their opioids using unbranded advertising, paid speakers and “key opinion leaders” (“KOLs”), and industry-funded organizations posing as neutral and credible professional societies and patient advocacy groups (referred to hereinafter as “Front Groups”).

6 101. The Manufacturer Defendants deceptively marketed opioids in the
7 State and Plaintiffs' Community through unbranded advertising – e.g., advertising
8 that promotes opioid use generally but does not name a specific opioid. This
9 advertising was ostensibly created and disseminated by independent third parties.
10 But by funding, directing, reviewing, editing, and distributing this unbranded
11 advertising, the Manufacturer Defendants controlled the deceptive messages
12 disseminated by these third parties and acted in concert with them to falsely and
13 misleadingly promote opioids for the treatment of chronic pain. Much as
14 Defendants controlled the distribution of their “core messages” via their own
15 detailers and speaker programs, the Manufacturer Defendants similarly controlled
16 the distribution of these messages in scientific publications, treatment guidelines,
17 Continuing Medical Education (“CME”) programs, and medical conferences and
18 seminars. To this end, the Manufacturer Defendants used third-party public
19 relations firms to help control those messages when they originated from third-
20 parties.

102. The Manufacturer Defendants marketed through third-party, unbranded advertising to avoid regulatory scrutiny because that advertising is not submitted to and typically is not reviewed by the FDA. The Manufacturer Defendants also used third-party, unbranded advertising to give the false appearance that the deceptive messages came from an independent and objective source. Like the tobacco companies, the Manufacturer Defendants used third

28 | 18, 2010),
<http://www.fdanews.com/ext/resources/files/archives/a/ActavisElizabethLLC.pdf>.

1 parties that they funded, directed, and controlled to carry out and conceal their
2 scheme to deceive doctors and patients about the risks and benefits of long term
3 opioid use for chronic pain.

4 103. Defendants also identified doctors to serve, for payment, on their
5 speakers' bureaus and to attend programs with speakers and meals paid for by
6 Defendants. These speaker programs provided: (1) an incentive for doctors to
7 prescribe a particular opioid (so they might be selected to promote the drug); (2)
8 recognition and compensation for the doctors selected as speakers; and (3) an
9 opportunity to promote the drug through the speaker to his or her peers. These
10 speakers give the false impression that they are providing unbiased and medically
11 accurate presentations when they are, in fact, presenting a script prepared by
12 Defendants. On information and belief, these presentations conveyed misleading
13 information, omitted material information, and failed to correct Defendants' prior
14 misrepresentations about the risks and benefits of opioids.

15 104. Borrowing a page from Big Tobacco's playbook, the Manufacturer
16 Defendants worked through third parties they controlled by: (a) funding, assisting,
17 encouraging, and directing doctors who served as KOLS, and (b) funding,
18 assisting, directing, and encouraging seemingly neutral and credible Front Groups.
19 The Manufacturer Defendants then worked together with those KOLs and Front
20 Groups to taint the sources that doctors and patients relied on for ostensibly
21 "neutral" guidance, such as treatment guidelines, CME programs, medical
22 conferences and seminars, and scientific articles. Thus, working individually and
23 collectively, and through these Front Groups and KOLs, the Manufacturer
24 Defendants persuaded doctors and patients that what they have long known – that
25 opioids are addictive drugs, unsafe in most circumstances for long-term use – was
26 untrue, and that the compassionate treatment of pain required opioids.

27 105. In 2007, multiple States sued Purdue for engaging in unfair and
28 deceptive practices in its marketing, promotion, and sale of OxyContin. Certain

1 states settled their claims in a series of Consent Judgments that prohibited Purdue
2 from making misrepresentations in the promotion and marketing of OxyContin in
3 the future. By using indirect marketing strategies, however, Purdue intentionally
4 circumvented these restrictions. Such actions include contributing to the creation
5 of misleading publications and prescribing guidelines which lack reliable
6 scientific basis, and promoting prescribing practices which have worsened the
7 opioid crisis.

8 106. Pro-opioid doctors are one of the most important avenues that the
9 Manufacturer Defendants use to spread their false and deceptive statements about
10 the risks and benefits of long-term opioid use. The Manufacturer Defendants
11 know that doctors rely heavily and less critically on their peers for guidance, and
12 KOLs provide the false appearance of unbiased and reliable support for chronic
13 opioid therapy. For example, the State of New York found in its settlement with
14 Purdue that the Purdue website “In the Face of Pain” failed to disclose that doctors
15 who provided testimonials on the site were paid by Purdue and concluded that
16 Purdue’s failure to disclose these financial connections potentially misled
17 consumers regarding the objectivity of the testimonials.

18 107. Defendants utilized many KOLs, including many of the same ones.

19 108. Dr. Russell Portenoy, former Chairman of the Department of Pain
20 Medicine and Palliative Care at Beth Israel Medical Center in New York, is one
21 example of a KOL whom the Manufacturer Defendants identified and promoted to
22 further their marketing campaign. Dr. Portenoy received research support,
23 consulting fees, and honoraria from Cephalon, Endo, Janssen, and Purdue (among
24 others), and was a paid consultant to Cephalon and Purdue. Dr. Portenoy was
25 instrumental in opening the door for the regular use of opioids to treat chronic
26 pain. He served on the American Pain Society (“APS”) / American Academy of
27 Pain Medicine (“AAPM”) Guidelines Committees, which endorsed the use of
28 opioids to treat chronic pain, first in 1996 and again in 2009. He was also a

1 member of the board of the American Pain Foundation (“APF”), an advocacy
2 organization almost entirely funded by the Manufacturer Defendants.

3 109. Dr. Portenoy also made frequent media appearances promoting
4 opioids and spreading misrepresentations, such as his claim that “the likelihood
5 that the treatment of pain using an opioid drug which is prescribed by a doctor
6 will lead to addiction is extremely low.” He appeared on Good Morning America
7 in 2010 to discuss the use of opioids long-term to treat chronic pain. On this
8 widely-watched program, broadcast across the country, Dr. Portenoy claimed:
9 “Addiction, when treating pain, is distinctly uncommon. If a person does not have
10 a history, a personal history, of substance abuse, and does not have a history in the
11 family of substance abuse, and does not have a very major psychiatric disorder,
12 most doctors can feel very assured that that person is not going to become
13 addicted.”⁷⁷

14 110. Dr. Portenoy later admitted that he “gave innumerable lectures in the
15 late 1980s and ‘90s about addiction that weren’t true.” These lectures falsely
16 claimed that fewer than 1% of patients would become addicted to opioids.
17 According to Dr. Portenoy, because the primary goal was to “destigmatize”
18 opioids, he and other doctors promoting them overstated their benefits and glossed
19 over their risks. Dr. Portenoy also conceded that “[d]ata about the effectiveness of
20 opioids does not exist.”⁷⁸ Portenoy candidly stated: “Did I teach about pain
21 management, specifically about opioid therapy, in a way that reflects
22 misinformation? Well, . . . I guess I did.”⁷⁹

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⁷⁷ Good Morning America (ABC television broadcast Aug. 30, 2010).

26 ⁷⁸ Thomas Catan & Evan Perez, *A Pain-Drug Champion Has Second Thoughts*,
27 Wall St. J., Dec. 17, 2012,
28 <https://www.wsj.com/articles/SB10001424127887324478304578173342657044604>.

⁷⁹ *Id.*

1 111. Another KOL, Dr. Lynn Webster, was the co-founder and Chief
2 Medical Director of Lifetree Clinical Research, an otherwise unknown pain clinic
3 in Salt Lake City, Utah. Dr. Webster was President of the AAPM in 2013. He is a
4 Senior Editor of Pain Medicine, the same journal that published Endo special
5 advertising supplements touting Opana ER. Dr. Webster was the author of
6 numerous CMEs sponsored by Cephalon, Endo, and Purdue. At the same time,
7 Dr. Webster was receiving significant funding from the Manufacturer Defendants
8 (including nearly \$2 million from Cephalon).

9 112. During a portion of his time as a KOL, Dr. Webster was under
10 investigation for overprescribing by the U.S. Department of Justice's Drug
11 Enforcement Agency, which raided his clinic in 2010. Although the investigation
12 was closed without charges in 2014, more than 20 of Dr. Webster's former
13 patients at the Lifetree Clinic have died of opioid overdoses.

14 113. Ironically, Dr. Webster created and promoted the Opioid Risk Tool, a
15 five question, one-minute screening tool relying on patient self-reports that
16 purportedly allows doctors to manage the risk that their patients will become
17 addicted to or abuse opioids. The claimed ability to pre-sort patients likely to
18 become addicted is an important tool in giving doctors confidence to prescribe
19 opioids long-term, and for this reason, references to screening appear in various
20 industry-supported guidelines. Versions of Dr. Webster's Opioid Risk Tool appear
21 on, or are linked to, websites run by Endo, Janssen, and Purdue. Unaware of the
22 flawed science and industry bias underlying this tool, certain states and public
23 entities have incorporated the Opioid Risk Tool into their own guidelines,
24 indicating, also, their reliance on the Manufacturer Defendants and those under
25 their influence and control.

26 114. In 2011, Dr. Webster presented, via webinar, a program sponsored by
27 Purdue entitled "Managing Patient's Opioid Use: Balancing the Need and the
28 Risk." Dr. Webster recommended use of risk screening tools, urine testing, and

1 patient agreements as a way to prevent “overuse of prescriptions” and “overdose
 2 deaths.” This webinar was available to and was intended to reach doctors in the
 3 State and doctors treating members of Plaintiffs’ Community.⁸⁰

4 115. Dr. Webster also was a leading proponent of the concept of
 5 “pseudoaddiction,” the notion that addictive behaviors should be seen not as
 6 warnings, but as indications of undertreated pain. In Dr. Webster’s description, the
 7 only way to differentiate the two was to increase a patient’s dose of opioids. As he
 8 and co-author Beth Dove wrote in their 2007 book *Avoiding Opioid Abuse While*
 9 *Managing Pain*—a book that is still available online—when faced with signs of
 10 aberrant behavior, increasing the dose “in most cases . . . should be the clinician’s
 11 first response.”⁸¹ Upon information and belief, Endo distributed this book to
 12 doctors. Years later, Dr. Webster reversed himself, acknowledging that
 13 “[pseudoaddiction] obviously became too much of an excuse to give patients more
 14 medication.”⁸²

15 116. The Manufacturer Defendants also entered into arrangements with
 16 seemingly unbiased and independent patient and professional organizations to
 17 promote opioids for the treatment of chronic pain. Under the direction and control
 18 of the Manufacturer Defendants, these “Front Groups” generated treatment
 19 guidelines, unbranded materials, and programs that favored chronic opioid
 20 therapy. They also assisted the Manufacturer Defendants by responding to
 21 negative articles, by advocating against regulatory changes that would limit opioid
 22

23 24 25 26 27 28 ⁸⁰ See Emerging Solutions in Pain, *Managing Patient’s Opioid Use: Balancing the*
Need and the Risk, http://www.emergingsolutionsinpain.com/ce-education/opioid-management?option=com_continued&view=frontmatter&Itemid=303&course=209 (last visited Aug. 22, 2017).

⁸¹ Lynn Webster & Beth Dove, *Avoiding Opioid Abuse While Managing Pain* (2007).

⁸² John Fauber, *Painkiller Boom Fueled by Networking*, Milwaukee Wisc. J. Sentinel, Feb. 18, 2012, <http://archive.jsonline.com/watchdog/watchdogreports/painkiller-boom-fueled-by-networking-dp3p2rn-139609053.html>.

1 prescribing in accordance with the scientific evidence, and by conducting outreach
 2 to vulnerable patient populations targeted by the Manufacturer Defendants.

3 117. These Front Groups depended on the Manufacturer Defendants for
 4 funding and, in some cases, for survival. The Manufacturer Defendants also
 5 exercised control over programs and materials created by these groups by
 6 collaborating on, editing, and approving their content, and by funding their
 7 dissemination. In doing so, the Manufacturer Defendants made sure that the Front
 8 Groups would generate only the messages that the Manufacturer Defendants
 9 wanted to distribute. Despite this, the Front Groups held themselves out as
 10 independent and serving the needs of their members – whether patients suffering
 11 from pain or doctors treating those patients.

12 118. Defendants Cephalon, Endo, Janssen, and Purdue, in particular,
 13 utilized many Front Groups, including many of the same ones. Several of the most
 14 prominent are described below, but there are many others, including the American
 15 Pain Society (“APS”), American Geriatrics Society (“AGS”), the Federation of
 16 State Medical Boards (“FSMB”), American Chronic Pain Association (“ACPA”),
 17 the Center for Practical Bioethics (“CPB”), the U.S. Pain Foundation (“USPF”)
 18 and Pain & Policy Studies Group (“PPSG”).⁸³

19 119. The most prominent of the Manufacturer Defendants’ Front Groups
 20 was the American Pain Foundation (“APF”), which, upon information and belief,
 21 received more than \$10 million in funding from opioid manufacturers from 2007
 22 until it closed its doors in May 2012, primarily from Endo and Purdue. APF
 23 issued education guides for patients, reporters, and policymakers that touted the
 24 benefits of opioids for chronic pain and trivialized their risks, particularly the risk
 25

26 83 See generally, e.g., Letter from Sen. Ron Wyden, U.S. Senate Comm. on Fin., to
 27 Sec. Thomas E. Price, U.S. Dep’t of Health and Human Servs., (May 5, 2015),
<https://www.finance.senate.gov/imo/media/doc/050517%20Senator%20Wyden%20to%20Secretary%20Price%20re%20FDA%20Opioid%20Prescriber%20Working%20Group.pdf>.

1 of addiction. APF also launched a campaign to promote opioids for returning
2 veterans, which has contributed to high rates of addiction and other adverse
3 outcomes – including death – among returning soldiers. APF also engaged in a
4 significant multimedia campaign – through radio, television and the internet – to
5 educate patients about their “right” to pain treatment, namely opioids. All of the
6 programs and materials were available nationally and were intended to reach
7 citizens of the State and Plaintiffs’ Community.

8 120. In 2009 and 2010, more than 80% of APF’s operating budget came
9 from pharmaceutical industry sources. Including industry grants for specific
10 projects, APF received about \$2.3 million from industry sources out of total
11 income of about \$2.85 million in 2009; its budget for 2010 projected receipts of
12 roughly \$2.9 million from drug companies, out of total income of about \$3.5
13 million. By 2011, upon information and belief, APF was entirely dependent on
14 incoming grants from defendants Purdue, Cephalon, Endo, and others to avoid
15 using its line of credit.

16 121. APF held itself out as an independent patient advocacy organization.
17 It often engaged in grassroots lobbying against various legislative initiatives that
18 might limit opioid prescribing, and thus the profitability of its sponsors. Upon
19 information and belief, it was often called upon to provide “patient
20 representatives” for the Manufacturer Defendants’ promotional activities,
21 including for Purdue’s Partners Against Pain and Janssen’s Let’s Talk Pain. APF
22 functioned largely as an advocate for the interests of the Manufacturer
23 Defendants, not patients. Indeed, upon information and belief, as early as 2001,
24 Purdue told APF that the basis of a grant was Purdue’s desire to “strategically
25 align its investments in nonprofit organizations that share [its] business interests.”

26 122. Plaintiffs are informed and believe that on several occasions,
27 representatives of the Manufacturer Defendants, often at informal meetings at
28 conferences, suggested activities and publications for APF to pursue. APF then

1 submitted grant proposals seeking to fund these activities and publications,
 2 knowing that drug companies would support projects conceived as a result of
 3 these communications.

4 123. The U.S. Senate Finance Committee began looking into APF in May
 5 2012 to determine the links, financial and otherwise, between the organization and
 6 the manufacturers of opioid painkillers. The investigation caused considerable
 7 damage to APF's credibility as an objective and neutral third party, and the
 8 Manufacturer Defendants stopped funding it. Within days of being targeted by
 9 Senate investigation, APF's board voted to dissolve the organization "due to
 10 irreparable economic circumstances." APF "cease[d] to exist, effective
 11 immediately."⁸⁴

12 124. Another front group for the Manufacturer Defendants was the
 13 American Academy of Pain Medicine ("AAPM"). With the assistance, prompting,
 14 involvement, and funding of the Manufacturer Defendants, the AAPM issued
 15 purported treatment guidelines and sponsored and hosted medical education
 16 programs essential to the Manufacturer Defendants' deceptive marketing of
 17 chronic opioid therapy.

18 125. AAPM received substantial funding from opioid manufacturers. For
 19 example, AAPM maintained a corporate relations council, whose members paid
 20 \$25,000 per year (on top of other funding) to participate. The benefits included
 21 allowing members to present educational programs at off-site dinner symposia in
 22 connection with AAPM's marquee event – its annual meeting held in Palm
 23 Springs, California, or other resort locations. AAPM describes the annual event as
 24 an "exclusive venue" for offering education programs to doctors. Membership in
 25

26 ⁸⁴ Charles Ornstein & Tracy Weber, *Senate Panel Investigates Drug Companies' Ties to Pain Groups*, Wash. Post, May 8, 2012,
 27 https://www.washingtonpost.com/national/health-science/senate-panel-investigates-drug-companies-ties-to-pain-groups/2012/05/08/gIQA2X4qBU_story.html.

1 the corporate relations council also allows drug company executives and
2 marketing staff to meet with AAPM executive committee members in small
3 settings. Defendants Endo, Purdue, and Cephalon were members of the council
4 and presented deceptive programs to doctors who attended this annual event.

5 126. Upon information and belief, AAPM is viewed internally by Endo as
6 “industry friendly,” with Endo advisors and speakers among its active members.
7 Endo attended AAPM conferences, funded its CMEs, and distributed its
8 publications. The conferences sponsored by AAPM heavily emphasized sessions
9 on opioids – 37 out of roughly 40 at one conference alone. AAPM’s presidents
10 have included top industry-supported KOLs Perry Fine and Lynn Webster. Dr.
11 Webster was even elected president of AAPM while under a DEA investigation.

12 127. The Manufacturer Defendants were able to influence AAPM through
13 both their significant and regular funding and the leadership of pro-opioid KOLs
14 within the organization.

15 128. In 1996, AAPM and APS jointly issued a consensus statement, “The
16 Use of Opioids for the Treatment of Chronic Pain,” which endorsed opioids to
17 treat chronic pain and claimed that the risk of a patients’ addiction to opioids was
18 low. Dr. Haddox, who co-authored the AAPM/APS statement, was a paid speaker
19 for Purdue at the time. Dr. Portenoy was the sole consultant. The consensus
20 statement remained on AAPM’s website until 2011, and, upon information and
21 belief, was taken down from AAPM’s website only after a doctor complained.⁸⁵

22 129. AAPM and APS issued their own guidelines in 2009 (“AAPM/APS
23 Guidelines”) and continued to recommend the use of opioids to treat chronic
24 pain.⁸⁶ Treatment guidelines have been relied upon by doctors, especially the

25
26 ⁸⁵ The Use of Opioids for the Treatment of Chronic Pain: A Consensus Statement
27 From the American Academy of Pain Medicine and the American Pain Society, 13
Clinical J. Pain 6 (1997).

28 ⁸⁶ Roger Chou et al., Clinical Guidelines for the Use of Chronic Opioid Therapy in
Chronic Non-Cancer Pain, 10 J. Pain 113 (2009).

1 general practitioners and family doctors targeted by the Manufacturer Defendants.
2 Treatment guidelines not only directly inform doctors' prescribing practices, but
3 are cited throughout the scientific literature and referenced by third-party payors
4 in determining whether they should cover treatments for specific indications.
5 Pharmaceutical sales representatives employed by Endo, Actavis, and Purdue
6 discussed treatment guidelines with doctors during individual sales visits.

7 130. At least fourteen of the 21 panel members who drafted the
8 AAPM/APS Guidelines, including KOLs Dr. Portenoy and Dr. Perry Fine of the
9 University of Utah, received support from Janssen, Cephalon, Endo, and Purdue.
10 The 2009 Guidelines promote opioids as "safe and effective" for treating chronic
11 pain, despite acknowledging limited evidence, and conclude that the risk of
12 addiction is manageable for patients regardless of past abuse histories.⁸⁷ One
13 panel member, Dr. Joel Saper, Clinical Professor of Neurology at Michigan State
14 University and founder of the Michigan Headache & Neurological Institute,
15 resigned from the panel because of his concerns that the 2009 Guidelines were
16 influenced by contributions that drug companies, including Manufacturer
17 Defendants, made to the sponsoring organizations and committee members. These
18 AAPM/APS Guidelines have been a particularly effective channel of deception
19 and have influenced not only treating physicians, but also the body of scientific
20 evidence on opioids; the Guidelines have been cited hundreds of times in
21 academic literature, were disseminated in the State and/or Plaintiffs' Community
22 during the relevant time period, are still available online, and were reprinted in the
23 Journal of Pain. The Manufacturer Defendants widely referenced and promoted
24 the 2009 Guidelines without disclosing the lack of evidence to support them or the
25 Manufacturer Defendants' financial support to members of the panel.

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⁸⁷ *Id.*

1 131. The Manufacturer Defendants worked together, through Front
 2 Groups, to spread their deceptive messages about the risks and benefits of long-
 3 term opioid therapy. For example, Defendants combined their efforts through the
 4 Pain Care Forum (“PCF”), which began in 2004 as an APF project. PCF is
 5 comprised of representatives from opioid manufacturers (including Cephalon,
 6 Endo, Janssen, and Purdue) and various Front Groups, almost all of which
 7 received substantial funding from the Manufacturer Defendants. Among other
 8 projects, PCF worked to ensure that an FDA-mandated education project on
 9 opioids was not unacceptably negative and did not require mandatory participation
 10 by prescribers, which the Manufacturer Defendants determined would reduce
 11 prescribing.

12 **2. The Manufacturer Defendants’ Marketing Scheme**
 13 **Misrepresented the Risks and Benefits of Opioids.**

14 *i. The Manufacturer Defendants embarked upon a campaign*
 15 *of false, deceptive, and unfair assurances grossly*
 16 *understating and misstating the dangerous addiction risks*
 17 *of the opioid drugs.*

18 132. To falsely assure physicians and patients that opioids are safe, the
 19 Manufacturer Defendants deceptively trivialized and failed to disclose the risks of
 20 long-term opioid use, particularly the risk of addiction, through a series of
 21 misrepresentations that have been conclusively debunked by the FDA and CDC.
 22 These misrepresentations – which are described below – reinforced each other and
 23 created the dangerously misleading impression that: (1) starting patients on
 24 opioids was low risk because most patients would not become addicted, and
 25 because those at greatest risk for addiction could be identified and managed; (2)
 26 patients who displayed signs of addiction probably were not addicted and, in any
 27 event, could easily be weaned from the drugs; (3) the use of higher opioid doses,
 28 which many patients need to sustain pain relief as they develop tolerance to the
 drugs, do not pose special risks; and (4) abuse-deterrent opioids both prevent
 abuse and overdose and are inherently less addictive. The Manufacturer

1 Defendants have not only failed to correct these misrepresentations, they continue
 2 to make them today.

3 133. Opioid manufacturers, including Defendants Endo Pharmaceuticals,
 4 Inc. and Purdue Pharma L.P., have entered into settlement agreements with public
 5 entities that prohibit them from making many of the misrepresentations identified
 6 in this Complaint. Yet even afterward, each Manufacturer Defendant continued to
 7 misrepresent the risks and benefits of long-term opioid use in the State and
 8 Plaintiffs' Community and each continues to fail to correct its past
 9 misrepresentations.

10 134. Some illustrative examples of the Manufacturer Defendants' false,
 11 deceptive, and unfair claims about the purportedly low risk of addiction include:

- 12 a. Actavis's predecessor caused a patient education brochure, *Managing*
 13 *Chronic Back Pain*, to be distributed beginning in 2003 that admitted
 14 that opioid addiction is possible, but falsely claimed that it is "less
 15 likely if you have never had an addiction problem." Based on
 Actavis's acquisition of its predecessor's marketing materials along
 with the rights to Kadian, it appears that Actavis continued to use this
 brochure in 2009 and beyond.
- 16 b. Cephalon and Purdue sponsored APF's *Treatment Options: A Guide*
 17 *for People Living with Pain* (2007), which suggested that addiction is
 rare and limited to extreme cases of unauthorized dose escalations,
 obtaining duplicative opioid prescriptions from multiple sources, or
 theft. This publication is still available online.⁸⁸
- 18 c. Endo sponsored a website, "PainKnowledge," which, upon
 19 information and belief, claimed in 2009 that "[p]eople who take
 opioids as prescribed usually do not become addicted." Upon
 20 information and belief, another Endo website, PainAction.com, stated
 "Did you know? Most chronic pain patients do not become addicted
 21 to the opioid medications that are prescribed for them." Endo also
 distributed an "Informed Consent" document on PainAction.com that
 22 misleadingly suggested that only people who "have problems with
 substance abuse and addiction" are likely to become addicted to
 23 opioid medications.
- 24 d. Upon information and belief, Endo distributed a pamphlet with the
 25 Endo logo entitled *Living with Someone with Chronic Pain*, which

27 ⁸⁸ Am. Pain Found., *Treatment Options: A Guide for People Living in Pain* (2007)
 28 [hereinafter APF, *Treatment Options*],
<https://assets.documentcloud.org/documents/277605/apf-treatmentoptions.pdf>.

1 stated that: “Most health care providers who treat people with pain
 2 agree that most people do not develop an addiction problem.”
 3

- 4 e. Janssen reviewed, edited, approved, and distributed a patient
 5 education guide entitled *Finding Relief: Pain Management for Older*
 6 *Adults* (2009), which described as “myth” the claim that opioids are
 7 addictive, and asserted as fact that “[m]any studies show that opioids
 8 are rarely addictive when used properly for the management of
 9 chronic pain.”
- 10 f. Janssen currently runs a website, Prescriberesponsibly.com (last
 11 updated July 2, 2015), which claims that concerns about opioid
 12 addiction are “overestimated.”
- 13 g. Purdue sponsored APF’s *A Policymaker’s Guide to Understanding*
 14 *Pain & Its Management*, which claims that less than 1% of children
 15 prescribed opioids will become addicted and that pain is undertreated
 16 due to “[m]isconceptions about opioid addiction.”⁸⁹
- 17 h. In 2010, Mallinckrodt sponsored an initiative “Collaborating and
 18 Acting Responsibly to Ensure Safety (C.A.R.E.S.), through which it
 19 published and promoted the book “Defeat Chronic Pain Now!” aimed
 20 at chronic pain patients. The book, which is still available for sale in
 21 New Mexico and elsewhere, and is promoted online at
 22 www.defeatchronicpainnow.com, advises laypeople who are
 23 considering taking opioid drugs that “[o]nly rarely does opioid
 24 medication cause a true addiction.”⁹⁰ Further, the book advises that
 25 even the issue of tolerance is “overblown,” because “[o]nly a
 26 minority of chronic pain patients who are taking long-term opioids
 27 develop tolerance.” In response to a hypothetical question from a
 28 chronic back pain patient who expresses a fear of becoming addicted,
 the book advises that “[i]t is very uncommon for a person with
 chronic pain to become ‘addicted’ to narcotics IF (1) he doesn’t have
 a prior history of any addiction and (2) he only takes the medication
 to treat pain.”
- i. Consistent with the Manufacturer Defendants’ published marketing
 materials, upon information and belief, detailers for Purdue, Endo,
 Janssen, and Cephalon in the State and Plaintiffs’ Community
 minimized or omitted any discussion with doctors of the risk of
 addiction; misrepresented the potential for abuse of opioids with
 purportedly abuse-deterrent formulations; and routinely did not
 correct the misrepresentations noted above.
- j. Seeking to overturn the criminal conviction of a doctor for illegally
 prescribing opioids, the Manufacturer Defendants’ Front Groups APF
 and NFP argued in an *amicus* brief to the United States Fourth

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 30 ⁸⁹ Am. Pain Found., *A Policymaker’s Guide to Understanding Pain and Its*
 31 *Management* 6 (2011) [hereinafter APF, *Policymaker’s Guide*],
 32 <http://s3.documentcloud.org/documents/277603/apf-policymakers-guide.pdf>.

33
 34 ⁹⁰ Charles E. Argoff & Bradley S. Galer, *Defeat Chronic Pain Now!* (2010).

1 Circuit Court of Appeals that “patients rarely become addicted to
 2 prescribed opioids,” citing research by their KOL, Dr. Portenoy.⁹¹

3 135. These claims are contrary to longstanding scientific evidence. A 2016
 4 opioid-prescription guideline issued by the CDC (the “2016 CDC Guideline”)
 5 explains that there is “[e]xtensive evidence” of the “possible harms of opioids
 6 (including opioid use disorder [an alternative term for opioid addiction], [and]
 7 overdose . . .).”⁹² The 2016 CDC Guideline further explains that “[o]pioid pain
 8 medication use presents serious risks, including overdose and opioid use disorder”
 9 and that “continuing opioid therapy for 3 months substantially increases risk for
 opioid use disorder.”⁹³

10 136. The FDA further exposed the falsity of Defendants’ claims about the
 11 low risk of addiction when it announced changes to the labels for extended-release
 12 and long-acting (“ER/LA”) opioids in 2013 and for immediate release (“IR”)
 13 opioids in 2016. In its announcements, the FDA found that “most opioid drugs
 14 have ‘high potential for abuse’” and that opioids “are associated with a substantial
 15 risk of misuse, abuse, NOWS [neonatal opioid withdrawal syndrome], addiction,
 16 overdose, and death.” According to the FDA, because of the “known serious
 17 risks” associated with long-term opioid use, including “risks of addiction, abuse,
 18 and misuse, even at recommended doses, and because of the greater risks of
 19 overdose and death,” opioids should be used only “in patients for whom
 20 alternative treatment options” like non-opioid drugs have failed.⁹⁴

21

22 ⁹¹ Brief of the American Pain Foundation, the National Pain Foundation, and the
 23 National Foundation for the Treatment of Pain in Support of Appellant and
 Reversal of the Conviction, *United States v. Hurowitz*, No. 05-4474 (4th Cir. Sept.
 8, 2005) [hereinafter Brief of APF] at 9.

24 ⁹² Deborah Dowell et al., *CDC Guideline for Prescribing Opioids for Chronic*
 25 *Pain—United States, 2016*, Morbidity & Mortality Wkly. Rep., Mar. 18, 2016, at
 15 [hereinafter 2016 CDC Guideline],
<https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1.htm>.

26 ⁹³ *Id.* at 2, 25.

27 ⁹⁴ Letter from Janet Woodcock, M.D., Dir., Ctr. For Drug Evaluation and
 28 Research, U.S. Food and Drug Admin., U.S. Dep’t of Health and Human Servs., to
 Andrew Koldny, M.D., President, Physicians for Responsible Opioid Prescribing
 (Sept. 10, 2013), <https://www.regulations.gov/contentStreamer?documentId=FDA->

1 137. The State of New York, in a 2016 settlement agreement with Endo,
 2 found that opioid “use disorders appear to be highly prevalent in chronic pain
 3 patients treated with opioids, with up to 40% of chronic pain patients treated in
 4 specialty and primary care outpatient centers meeting the clinical criteria for an
 5 opioid use disorder.”⁹⁵ Endo had claimed on its www.opana.com website that
 6 “[m]ost healthcare providers who treat patients with pain agree that patients
 7 treated with prolonged opioid medicines usually do not become addicted,” but the
 8 State of New York found that Endo had no evidence for that statement. Consistent
 9 with this, Endo agreed not to “make statements that . . . opioids generally are non-
 10 addictive” or “that most patients who take opioids do not become addicted” in
 11 New York. Endo remains free, however, to make those statements in this State.

12 138. In addition to mischaracterizing the highly addictive nature of the
 13 drugs they were pushing, the Manufacturer Defendants also fostered a
 14 fundamental misunderstanding of the signs of addiction. Specifically, the
 15 Manufacturer Defendants misrepresented, to doctors and patients, that warning
 16 signs and/or symptoms of addiction were, instead, signs of undertreated pain (i.e.
 17 pseudoaddiction) – and instructed doctors to increase the opioid prescription dose
 18 for patients who were already in danger.

19 139. To this end, one of Purdue’s employees, Dr. David Haddox, invented
 20 a phenomenon called “pseudoaddiction.” KOL Dr. Portenoy popularized the term.
 21 Examples of the false, misleading, deceptive, and unfair statements regarding
 22 pseudoaddiction include:

23
 24 2012-P-0818-0793&attachmentNumber=1&contentType=pdf.; Letter from Janet
 25 Woodcock, M.D., Dir., Ctr. For Drug Evaluation and Research, U.S. Food and
 26 Drug Admin., U.S. Dep’t of Health and Human Servs., to Peter R. Mathers &
 27 Jennifer A. Davidson, Kleinfeld, Kaplan and Becker, LLP (Mar. 22, 2016),
<https://www.regulations.gov/contentStreamer?documentId=FDA-2014-P-0205-0006&attachmentNumber=1&contentType=pdf>.

28 95 Assurance of Discontinuance, *In re Endo Health Solutions Inc. and Endo Pharm. Inc.* (Assurance No. 15-228), at 16,
https://ag.ny.gov/pdfs/Endo_AOD_030116-Fully_Executed.pdf.

- a. Cephalon and Purdue sponsored *Responsible Opioid Prescribing* (2007), which taught that behaviors such as “requesting drugs by name,” “demanding or manipulative behavior,” seeing more than one doctor to obtain opioids, and hoarding, are all signs of pseudoaddiction, rather than true addiction.⁹⁶ The 2012 edition, which remains available for sale online, continues to teach that pseudoaddiction is real.⁹⁷
- b. Janssen sponsored, funded, and edited the Let’s Talk Pain website, which in 2009 stated: “pseudoaddiction . . . refers to patient behaviors that may occur when pain is under-treated Pseudoaddiction is different from true addiction because such behaviors can be resolved with effective pain management.”
- c. Endo sponsored a National Initiative on Pain Control (“NIPC”) CME program in 2009 entitled “Chronic Opioid Therapy: Understanding Risk While Maximizing Analgesia,” which, upon information and belief, promoted pseudoaddiction by teaching that a patient’s aberrant behavior was the result of untreated pain. Endo appears to have substantially controlled NIPC by funding NIPC projects; developing, specifying, and reviewing content; and distributing NIPC materials.
- d. Purdue published a pamphlet in 2011 entitled *Providing Relief, Preventing Abuse*, which, upon information and belief, described pseudoaddiction as a concept that “emerged in the literature” to describe the inaccurate interpretation of [drug-seeking behaviors] in patients who have pain that has not been effectively treated.”
- e. Upon information and belief, Purdue sponsored a CME program titled “Path of the Patient, Managing Chronic Pain in Younger Adults at Risk for Abuse”. In a role play, a chronic pain patient with a history of drug abuse tells his doctor that he is taking twice as many hydrocodone pills as directed. The narrator notes that because of pseudoaddiction, the doctor should not assume the patient is addicted even if he persistently asks for a specific drug, seems desperate, hoards medicine, or “overindulges in unapproved escalating doses.” The doctor treats this patient by prescribing a high-dose, long-acting opioid.
- f. In 2010, Mallinckrodt sponsored an initiative “Collaborating and Acting Responsibly to Ensure Safety (C.A.R.E.S.), through which it published and promoted the book “Defeat Chronic Pain Now!” aimed at chronic pain patients. The book, which is still available for sale, and is promoted online at www.defeatchronicpainnow.com, teaches laypeople that “pseudoaddiction” is “caused by their doctor not appropriately prescribing the opioid medication.” It teaches that “[p]seudoaddiction happens when a patient’s opioid medication is not being prescribed in doses strong enough to provide good pain relief,

⁹⁶ Scott M. Fishman, M.D., *Responsible Opioid Prescribing: A Physician’s Guide* (2007) at 62.

⁹⁷ See Scott M. Fishman, M.D., *Responsible Opioid Prescribing: A Physician’s Guide* (2d ed. 2012).

1 or if the drug is not being prescribed often enough throughout the
 2 day. . . When a pseudoaddicted patient is prescribed the proper
 3 amount of opioid medication, he or she doesn't take any extra pills
 4 because his or her pain is relieved.”

5 140. In the 2016 CDC Guideline, the CDC rejects the validity of the
 6 pseudoaddiction fallacy invented by a Purdue employee as a reason to push more
 7 opioid drugs onto already addicted patients.

8 141. In addition to misstating the addiction risk and inventing the
 9 pseudoaddiction falsehood, a third category of false, deceptive, and unfair practice
 10 is the Manufacturer Defendants’ false instructions that addiction risk screening
 11 tools, patient contracts, urine drug screens, and similar strategies allow them to
 12 reliably identify and safely prescribe opioids to patients predisposed to addiction.
 13 These misrepresentations were especially insidious because the Manufacturer
 14 Defendants aimed them at general practitioners and family doctors who lack the
 15 time and expertise to closely manage higher-risk patients on opioids. The
 16 Manufacturer Defendants’ misrepresentations made these doctors feel more
 17 comfortable prescribing opioids to their patients, and patients more comfortable
 18 starting on opioid therapy for chronic pain. Illustrative examples include:

- 19 a. Endo paid for a 2007 supplement in the *Journal of Family Practice*
 20 written by a doctor who became a member of Endo’s speakers bureau
 21 in 2010. The supplement, entitled *Pain Management Dilemmas in*
Primary Care: Use of Opioids, emphasized the effectiveness of
 22 screening tools, claiming that patients at high risk of addiction could
 23 safely receive chronic opioid therapy using a “maximally structured
 24 approach” involving toxicology screens and pill counts.
- 25 b. Purdue, upon information and belief, sponsored a 2011 webinar,
Managing Patient’s Opioid Use: Balancing the Need and Risk, which
 26 claimed that screening tools, urine tests, and patient agreements
 27 prevent “overuse of prescriptions” and “overdose deaths.”
- 28 c. As recently as 2015, upon information and belief, Purdue has
 29 represented in scientific conferences that “bad apple” patients – and
 30 not opioids – are the source of the addiction crisis and that once those
 31 “bad apples” are identified, doctors can safely prescribe opioids
 32 without causing addiction.

33 142. The 2016 CDC Guideline confirms the falsity of these claims. The
 34 Guideline explains that there are no studies assessing the effectiveness of risk
 35

1 mitigation strategies “for improving outcomes related to overdose, addiction,
 2 abuse or misuse.”⁹⁸

3 143. A fourth category of deceptive messaging regarding dangerous
 4 opioids is the Manufacturer Defendants’ false assurances regarding the alleged
 5 ease of eliminating opioid dependence. The Manufacturer Defendants falsely
 6 claimed that opioid dependence can easily be addressed by tapering and that
 7 opioid withdrawal is not a problem, but they failed to disclose the increased
 8 difficulty of stopping opioids after long-term use. In truth, the 2016 CDC
 9 Guideline explains that the symptoms of opioid withdrawal include abdominal
 10 pain, vomiting, diarrhea, sweating, tremor, tachycardia, drug cravings, anxiety,
 11 insomnia, spontaneous abortion and premature labor in pregnant women.⁹⁹

12 144. The Manufacturer Defendants nonetheless downplayed the severity
 13 of opioid detoxification. For example, upon information and belief, a CME
 14 sponsored by Endo, entitled *Persistent Pain in the Older Adult*, claimed that
 15 withdrawal symptoms can be avoided by tapering a patient’s opioid dose by 10%-
 16 20% for 10 days. And Purdue sponsored APF’s *A Policymaker’s Guide to*
 17 *Understanding Pain & Its Management*, which claimed that “[s]ymptoms of
 18 physical dependence can often be ameliorated by gradually decreasing the dose of
 19 medication during discontinuation” without mentioning any hardships that might
 20 occur.¹⁰⁰ Similarly, in the 2010 Mallinckrodt/C.A.R.E.S. publication “Defeat
 21 Chronic Pain Now!” potential opioid users are advised that tolerance to opioids is
 22 “easily remedied,” and that “[a]ll patients can be safely taken off opioid
 23 medication if the dose is slowly tapered down by their doctor.”

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 25 _____
 26 ⁹⁸ *Id.* at 11.

27 ⁹⁹ *Id.* at 26.

28 ¹⁰⁰ Am. Pain Found., *A Policymaker’s Guide to Understanding Pain and Its Management* 6 (2011) [hereinafter APF, *Policymaker’s Guide*], <http://s3.documentcloud.org/documents/277603/apf-policymakers-guide.pdf.>, at 32.

1 145. A fifth category of false, deceptive, and unfair statements the
 2 Manufacturer Defendants made to sell more drugs is that opioid dosages could be
 3 increased indefinitely without added risk. The ability to escalate dosages was
 4 critical to Defendants' efforts to market opioids for long-term use to treat chronic
 5 pain because, absent this misrepresentation, doctors would have abandoned
 6 treatment when patients built up tolerance and lower dosages did not provide pain
 7 relief. The Manufacturer Defendants' deceptive claims include:

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- a. Upon information and belief, Actavis's predecessor created a patient brochure for Kadian in 2007 that stated, "Over time, your body may become tolerant of your current dose. You may require a dose adjustment to get the right amount of pain relief. This is not addiction." Based on Actavis's acquisition of its predecessor's marketing materials along with the rights to Kadian, Actavis appears to have continued to use these materials in 2009 and beyond.
- b. Cephalon and Purdue sponsored APF's *Treatment Options: A Guide for People Living with Pain* (2007), which claims that some patients "need" a larger dose of an opioid, regardless of the dose currently prescribed. The guide stated that opioids have "no ceiling dose" and insinuated that they are therefore the most appropriate treatment for severe pain.¹⁰¹ This publication is still available online.
- c. Endo sponsored a website, "PainKnowledge," which, upon information and belief, claimed in 2009 that opioid dosages may be increased until "you are on the right dose of medication for your pain."
- d. Endo distributed a pamphlet edited by a KOL entitled *Understanding Your Pain: Taking Oral Opioid Analgesics* (2004 Endo Pharmaceuticals PM-0120). In Q&A format, it asked "If I take the opioid now, will it work later when I really need it?" The response is, "The dose can be increased. . . . You won't 'run out' of pain relief."¹⁰²
- e. Janssen sponsored a patient education guide entitled *Finding Relief: Pain Management for Older Adults* (2009), which was distributed by its sales force. This guide listed dosage limitations as

¹⁰¹ Am. Pain Found., *Treatment Options: A Guide for People Living in Pain* (2007) [hereinafter APF, *Treatment Options*], <https://assets.documentcloud.org/documents/277605/apf-treatmentoptions.pdf>., at 12.

¹⁰² Margo McCaffery & Chris Pasero, Endo Pharm., *Understanding Your Pain: Taking Oral Opioid Analgesics* (Russell K Portenoy, M.D., ed., 2004).

1 “disadvantages” of other pain medicines but omitted any discussion
 2 of risks of increased opioid dosages.

- 3 f. Upon information and belief, Purdue’s In the Face of Pain website
 4 promoted the notion that if a patient’s doctor does not prescribe what,
 5 in the patient’s view, is a sufficient dosage of opioids, he or she
 6 should find another doctor who will.
- 7 g. Purdue sponsored APF’s *A Policymaker’s Guide to Understanding*
 8 *Pain & Its Management*, which taught that dosage escalations are
 9 “sometimes necessary,” and that “the need for higher doses of
 10 medication is not necessarily indicative of addiction” but
 11 inaccurately downplayed the risks from high opioid dosages.¹⁰³
- 12 h. In 2007, Purdue sponsored a CME entitled “Overview of
 13 Management Options” that was available for CME credit and
 14 available until at least 2012. The CME was edited by a KOL and
 15 taught that Non-steroidal Anti-inflammatory Drugs (“NSAIDs”) and
 16 other drugs, but not opioids, are unsafe at high dosages.
- 17 i. Purdue presented a 2015 paper at the College on the Problems of
 18 Drug Dependence, “the oldest and largest organization in the US
 19 dedicated to advancing a scientific approach to substance use and
 20 addictive disorders,” challenging the correlation between opioid
 21 dosage and overdose.¹⁰⁴
- 22 j. Seeking to overturn the criminal conviction of a doctor for illegally
 23 prescribing opioids, the Manufacturer Defendants’ Front Groups APF
 24 and NFP argued in an *amicus* brief to the United States Fourth
 25 Circuit Court of Appeals that “there is no ‘ceiling dose’” for
 26 opioids.¹⁰⁵
- 27 k. In the 2010 Mallinckrodt/C.A.R.E.S. publication “Defeat Chronic
 28 Pain Now!”, potential opioid users are warned about the risk of
 29 “[p]seudoaddiction [b]ecause of a [l]ow [d]ose,” and advised that this
 30 condition may be corrected through the prescription of a higher dose.
 31 Similarly, the book recommends that for chronic pain patients, the
 32 opioid dose should be “gradually increased to find the best daily
 33 dose, as is done with all the other oral drugs.” The book discusses the
 34 risks of NSAIDs and other drugs at higher doses, but not explain this
 35 risk for opioids.

36 146. Once again, the 2016 CDC Guideline reveals that the Manufacturer
 37 Defendants’ representations regarding opioids were lacking in scientific evidence.

38 25 ¹⁰³ Am. Pain Found., *A Policymaker’s Guide to Understanding Pain and Its*
 39 *Management* 6 (2011) [hereinafter APF, *Policymaker’s Guide*],
 40 <http://s3.documentcloud.org/documents/277603/apf-policymakers-guide.pdf>., at
 41 32.

42 27 ¹⁰⁴ The College on Problems of Drug Dependence, *About the College*,
 43 <http://cpdd.org> (last visited Aug. 21, 2017).

44 28 ¹⁰⁵ Brief of APF, at 9.

The 2016 CDC Guideline clarifies that the “[b]enefits of high-dose opioids for chronic pain are not established” while the “risks for serious harms related to opioid therapy increase at higher opioid dosage.”¹⁰⁶ More specifically, the CDC explains that “there is now an established body of scientific evidence showing that overdose risk is increased at higher opioid dosages.”¹⁰⁷ The CDC also states that there is an increased risk “for opioid use disorder, respiratory depression, and death at higher dosages.”¹⁰⁸ That is why the CDC advises doctors to “avoid increasing dosage” to above 90 morphine milligram equivalents per day.¹⁰⁹

9 147. Defendants' deceptive marketing of the so-called abuse-deterrent
10 properties of some of their opioids has created false impressions that these opioids
11 can cure addiction and abuse.

12 148. The Manufacturer Defendants made misleading claims about the
13 ability of their so-called abuse-deterrent opioid formulations to deter abuse. For
14 example, Endo’s advertisements for the 2012 reformulation of Opana ER claimed
15 that it was designed to be crush resistant, in a way that suggested it was more
16 difficult to abuse. This claim was false. The FDA warned in a 2013 letter that
17 Opana ER Extended-Release Tablets’ “extended-release features can be
18 compromised, causing the medication to ‘dose dump,’ when subject to . . . forms
19 of manipulation such as cutting, grinding, or chewing, followed by
20 swallowing.”¹¹⁰ Also troubling, Opana ER can be prepared for snorting using
21 commonly available methods and “readily prepared for injection.”¹¹¹ The letter

¹⁰⁶ 2016 CDC Guideline at 22–23.

¹⁰⁷ *Id.* at 23–24.

108 *Id.* at 21.

^{109}Id , at 16.

¹¹⁰ Letter from Janet Woodcock, M.D., Dir., Ctr. For Drug Evaluation and Research, U.S. Food and Drug Admin., U.S. Dep't of Health and Human Servs., to Robert Barto, Vice President, Reg. Affairs, Endo Pharm. Inc. (May 10, 2013), at 5.

111 *Id.* at 6.

1 discussed “the troubling possibility that a higher (and rising) percentage of [Opana
2 ER Extended-Release Tablet] abuse is occurring via injection.”¹¹² Endo’s own
3 studies, which it failed to disclose, showed that Opana ER could still be ground
4 and chewed. In June 2017, the FDA requested that Opana ER be removed from
5 the market.

ii. The Manufacturer Defendants embarked upon a campaign of false, deceptive, and unfair assurances grossly overstating the benefits of the opioid drugs.

8 149. To convince doctors and patients that opioids should be used to treat
9 chronic pain, the Manufacturer Defendants also had to persuade them that there
10 was a significant upside to long-term opioid use. But as the CDC Guideline makes
11 clear, “[n]o evidence shows a long-term benefit of opioids in pain and function
12 versus no opioids for chronic pain with outcomes examined at least 1 year later
13 (with most placebo-controlled randomized trials \leq 6 weeks in duration)” and that
14 other treatments were more or equally beneficial and less harmful than long-term
15 opioid use.¹¹³ The FDA, too, has recognized the lack of evidence to support long-
16 term opioid use. Despite this, Defendants falsely and misleadingly touted the
17 benefits of long-term opioid use and falsely and misleadingly suggested that these
18 benefits were supported by scientific evidence.

19 150. Some illustrative examples of the Manufacturer Defendants' false
20 claims are:

- 21 a. Upon information and belief, Actavis distributed an advertisement
22 claiming that the use of Kadian to treat chronic pain would allow
23 patients to return to work, relieve “stress on your body and your
24 mental health,” and help patients enjoy their lives.
25 b. Endo distributed advertisements that claimed that the use of Opana
ER for chronic pain would allow patients to perform demanding tasks
like construction work or work as a chef and portrayed seemingly
healthy, unimpaired subjects.

27 | ¹¹²Id at 6 n 21

²⁸ | ¹¹³ *Id.* at 15

- c. Janssen sponsored and edited a patient education guide entitled *Finding Relief: Pain Management for Older Adults* (2009) – which states as “a fact” that “opioids may make it easier for people to live normally.” The guide lists expected functional improvements from opioid use, including sleeping through the night, returning to work, recreation, sex, walking, and climbing stairs.
- d. Janssen promoted Ultracet for everyday chronic pain and distributed posters, for display in doctors’ offices, of presumed patients in active professions; the caption read, “Pain doesn’t fit into their schedules.”
- e. Upon information and belief, Purdue ran a series of advertisements for OxyContin in 2012 in medical journals entitled “Pain vignettes,” which were case studies featuring patients with pain conditions persisting over several months and recommending OxyContin for them. The ads implied that OxyContin improves patients’ function.
- f. *Responsible Opioid Prescribing* (2007), sponsored and distributed by Cephalon, Endo and Purdue, taught that relief of pain by opioids, by itself, improved patients’ function.
- g. Cephalon and Purdue sponsored APF’s *Treatment Options: A Guide for People Living with Pain* (2007), which counseled patients that opioids “give [pain patients] a quality of life we deserve.”¹¹⁴ This publication is still available online.
- h. Endo’s NIPC website “PainKnowledge” claimed in 2009, upon information and belief, that with opioids, “your level of function should improve; you may find you are now able to participate in activities of daily living, such as work and hobbies, that you were not able to enjoy when your pain was worse.” Elsewhere, the website touted improved quality of life (as well as “improved function”) as benefits of opioid therapy. The grant request that Endo approved for this project specifically indicated NIPC’s intent to make misleading claims about function, and Endo closely tracked visits to the site.
- i. Endo was the sole sponsor, through NIPC, of a series of CMEs entitled “Persistent Pain in the Older Patient.”¹¹⁵ Upon information and belief, a CME disseminated via webcast claimed that chronic opioid therapy has been “shown to reduce pain and improve depressive symptoms and cognitive functioning.”
- j. Janssen sponsored and funded a multimedia patient education campaign called “Let’s Talk Pain.” One feature of the campaign was to complain that patients were under-treated. In 2009, upon information and belief, a Janssen-sponsored website, part of the

¹¹⁴ Am. Pain Found., *Treatment Options: A Guide for People Living in Pain* (2007) [hereinafter APF, *Treatment Options*], <https://assets.documentcloud.org/documents/277605/apf-treatmentoptions.pdf>.

¹¹⁵ E.g., NIPC, *Persistent Pain and the Older Patient* (2007), https://www.painedu.org/Downloads/NIPC/Activities/B173_Providence_RI_%20Invite.pdf.

1 “Let’s Talk Pain” campaign, featured an interview edited by Janssen
 2 claiming that opioids allowed a patient to “continue to function.”

- 3 k. Purdue sponsored the development and distribution of APF’s *A*
 4 *Policymaker’s Guide to Understanding Pain & Its Management*,
 5 which claimed that “[m]ultiple clinical studies” have shown that
 6 opioids are effective in improving “[d]aily function,”
 7 “[p]sychological health,” and “[o]verall health-related quality of life
 8 for chronic pain.”¹¹⁶ The *Policymaker’s Guide* was originally
 9 published in 2011.
- 10 l. Purdue’s, Cephalon’s, Endo’s, and Janssen’s sales representatives
 11 have conveyed and continue to convey the message that opioids will
 12 improve patient function.

13 151. As the FDA and other agencies have made clear for years, these
 14 claims have no support in the scientific literature.

15 152. In 2010, the FDA warned Actavis, in response to its advertising of
 16 Kadian described above, that “we are not aware of substantial evidence or
 17 substantial clinical experience demonstrating that the magnitude of the effect of
 18 the drug [Kadian] has in alleviating pain, taken together with any drug-related side
 19 effects patients may experience . . . results in any overall positive impact on a
 20 patient’s work, physical and mental functioning, daily activities, or enjoyment of
 21 life.”¹¹⁷ And in 2008, upon information and belief, the FDA sent a warning letter
 22 to an opioid manufacturer, making it clear “that [the claim that] patients who are
 23 treated with the drug experience an improvement in their overall function, social
 24 function, and ability to perform daily activities . . . has not been demonstrated by
 25 substantial evidence or substantial clinical experience.”

26 153. The Manufacturer Defendants also falsely and misleadingly
 27 emphasized or exaggerated the risks of competing medications like NSAIDs, so

28 ¹¹⁶ Am. Pain Found., *A Policymaker’s Guide to Understanding Pain and Its*
 29 *Management* 6 (2011) [hereinafter APF, *Policymaker’s Guide*],
<http://s3.documentcloud.org/documents/277603/apf-policymakers-guide.pdf.>, at
 29.

30 ¹¹⁷ Letter from Thomas Abrams, Dir., Div. of Drug Mktg., Advert., & Commc’ns,
 31 U.S. Food & Drug Admin., to Doug Boothe, CEO, Actavis Elizabeth LLC (Feb.
 32 18, 2010),
<http://www.fdanews.com/ext/resources/files/archives/a/ActavisElizabethLLC.pdf.>

1 that doctors and patients would look to opioids first for the treatment of chronic
2 pain. Once again, these misrepresentations by the Manufacturer Defendants
3 contravene pronouncements by and guidance from the FDA and CDC based on
4 the scientific evidence. Indeed, the FDA changed the labels for extended-release
5 and long-acting (“ER/LA”) opioids in 2013 and immediate-release (“IR”) opioids
6 in 2016 to state that opioids should only be used as a last resort “in patients for
7 which alternative treatment options” like non-opioid drugs “are inadequate.” And
8 the 2016 CDC Guideline states that NSAIDs, not opioids, should be the first-line
9 treatment for chronic pain, particularly arthritis and lower back pain.¹¹⁸ Purdue
10 misleadingly promoted OxyContin as being unique among opioids in providing 12
11 continuous hours of pain relief with one dose. In fact, OxyContin does not last for
12 12 hours – a fact that Purdue has known at all times relevant to this action. Upon
13 information and belief, Purdue’s own research shows that OxyContin wears off in
14 under six hours in one quarter of patients and in under 10 hours in more than half.
15 This is because OxyContin tablets release approximately 40% of their active
16 medicine immediately, after which release tapers. This triggers a powerful initial
17 response, but provides little or no pain relief at the end of the dosing period, when
18 less medicine is released. This phenomenon is known as “end of dose” failure, and
19 the FDA found in 2008 that a “substantial proportion” of chronic pain patients
20 taking OxyContin experience it. This not only renders Purdue’s promise of 12
21 hours of relief false and deceptive, it also makes OxyContin more dangerous
22 because the declining pain relief patients experience toward the end of each
23 dosing period drives them to take more OxyContin before the next dosing period
24 begins, quickly increasing the amount of drug they are taking and spurring
25 growing dependence.

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¹¹⁸ 2016 CDC Guideline at 12.

1 154. Purdue's competitors were aware of this problem. For example, upon
 2 information and belief, Endo ran advertisements for Opana ER referring to "real"
 3 12-hour dosing. Nevertheless, Purdue falsely promoted OxyContin as if it were
 4 effective for a full 12 hours. Upon information and belief, Purdue's sales
 5 representatives continue to tell doctors that OxyContin lasts a full 12 hours.

6 155. Front Groups supported by Purdue likewise echoed these
 7 representations. For example, in an amicus brief submitted to the Supreme Court
 8 of Ohio by the American Pain Foundation, the National Foundation for the
 9 Treatment of Pain and the Ohio Pain Initiative in support of Purdue, those amici
 10 represented:

11 OxyContin is particularly useful for sustained long-term pain because
 12 it comes in higher, compact pills with a slow release coating. OxyContin pills can work for 12 hours. This makes it easier for
 13 patients to comply with dosing requirements without experiencing a roller-coaster of pain relief followed quickly by pain renewal that can
 14 occur with shorter acting medications. It also helps the patient sleep
 15 through the night, which is often impossible with short-acting
 16 medications. For many of those serviced by Pain Care Amici,
 17 OxyContin has been a miracle medication.¹¹⁹

18 156. Cephalon deceptively marketed its opioids Actiq and Fentora for
 19 chronic pain even though the FDA has expressly limited their use to the treatment
 20 of cancer pain in opioid tolerant individuals. Both Actiq and Fentora are
 21 extremely powerful fentanyl-based IR opioids. Neither is approved for or has been
 22 shown to be safe or effective for chronic pain. Indeed, the FDA expressly
 23 prohibited Cephalon from marketing Actiq for anything but cancer pain, and
 24 refused to approve Fentora for the treatment of chronic pain because of the
 25 potential harm, including the high risk of "serious and life-threatening adverse
 26 events" and abuse – which are greatest in non-cancer patients. The FDA also

27 119 Reply Brief of Amicus Curiae of the American Pain Foundation, The National
 28 Foundation for the Treatment of Pain and the Ohio Pain Initiative Supporting
 Appellants, *Howland v. Purdue Pharma L.P.*, No. 2003-1538 (Ohio Apr. 13,
 2004), 2004 WL 1637768, at *4 (footnote omitted).

1 issued a Public Health Advisory in 2007 emphasizing that Fentora should only be
 2 used for cancer patients who are opioid-tolerant and should not be used for any
 3 other conditions, such as migraines, post-operative pain, or pain due to injury.¹²⁰
 4 Specifically, the FDA advised that Fentora “is only approved for breakthrough
 5 cancer pain in patients who are *opioid-tolerant*, meaning those patients who take a
 6 regular, daily, around-the-clock narcotic pain medication.”¹²¹

7 157. Despite this, Cephalon conducted and continues to conduct a well-
 8 funded campaign to promote Actiq and Fentora for chronic pain and other non-
 9 cancer conditions for which it was not approved, appropriate, and for which it is
 10 not safe. As part of this campaign, Cephalon used CMEs, speaker programs,
 11 KOLs, journal supplements, and detailing by its sales representatives to give
 12 doctors the false impression that Actiq and Fentora are safe and effective for
 13 treating non-cancer pain. For example:

- 14 a. Cephalon paid to have a CME it sponsored, *Opioid-Based*
 15 *Management of Persistent and Breakthrough Pain*, published in a
 16 supplement of Pain Medicine News in 2009. The CME instructed
 17 doctors that “[c]linically, broad classification of pain syndromes as
 either cancer- or non-cancer-related has limited utility” and
 18 recommended Actiq and Fentora for patients with chronic pain.
- 19 b. Upon information and belief, Cephalon’s sales representatives set up
 20 hundreds of speaker programs for doctors, including many non-
 21 oncologists, which promoted Actiq and Fentora for the treatment of
 22 non-cancer pain.
- 23 c. In December 2011, Cephalon widely disseminated a journal
 24 supplement entitled “Special Report: An Integrated Risk Evaluation
 25 and Mitigation Strategy for Fentanyl Buccal Tablet (FENTORA) and
 26 Oral Transmucosal Fentanyl Citrate (ACTIQ)” to Anesthesiology
 27 News, Clinical Oncology News, and Pain Medicine News – three
 28 publications that are sent to thousands of anesthesiologists and other
 medical professionals. The Special Report openly promotes Fentora
 for “multiple causes of pain” – and not just cancer pain.

26 ¹²⁰ See U.S. Food & Drug Admin., *Public Health Advisory: Important Information*
 27 *for the Safe Use of Fentora (fentanyl buccal tablets)* (Sept. 26, 2007),
 28 <https://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm051273.htm>.

121 *Id.*

1 158. Cephalon's deceptive marketing gave doctors and patients the false
 2 impression that Actiq and Fentora were not only safe and effective for treating
 3 chronic pain, but were also approved by the FDA for such uses.

4 159. Purdue also unlawfully and unfairly failed to report or address illicit
 5 and unlawful prescribing of its drugs, despite knowing about it for years. Purdue's
 6 sales representatives have maintained a database since 2002 of doctors suspected
 7 of inappropriately prescribing its drugs. Rather than report these doctors to state
 8 medical boards or law enforcement authorities (as Purdue is legally obligated to
 9 do) or cease marketing to them, Purdue used the list to demonstrate the high rate
 10 of diversion of OxyContin – the same OxyContin that Purdue had promoted as
 11 less addictive – in order to persuade the FDA to bar the manufacture and sale of
 12 generic copies of the drug because the drug was too likely to be abused. In an
 13 interview with the Los Angeles Times, Purdue's senior compliance officer
 14 acknowledged that in five years of investigating suspicious pharmacies, Purdue
 15 failed to take action – even where Purdue employees personally witnessed the
 16 diversion of its drugs. The same was true of prescribers; despite its knowledge of
 17 illegal prescribing, Purdue did not report that a Los Angeles clinic prescribed
 18 more than 1.1 million OxyContin tablets and that Purdue's district manager
 19 described it internally as “an organized drug ring” until years after law
 20 enforcement shut it down. In doing so, Purdue protected its own profits at the
 21 expense of public health and safety.¹²²

22 160. Like Purdue, Endo has been cited for its failure to set up an effective
 23 system for identifying and reporting suspicious prescribing. In its settlement
 24 agreement with Endo, the State of New York found that Endo failed to require
 25 sales representatives to report signs of abuse, diversion, and inappropriate

27 28 ¹²² Harriet Ryan et al., *More Than 1 Million Oxycontin Pills Ended Up in the
 Hands of Criminals and Addicts. What the Drugmaker Knew*, L.A. Times, July 10,
 2016, <http://www.latimes.com/projects/la-me-oxycontin-part2/>.

1 prescribing; paid bonuses to sales representatives for detailing prescribers who
 2 were subsequently arrested or convicted for illegal prescribing; and failed to
 3 prevent sales representatives from visiting prescribers whose suspicious conduct
 4 had caused them to be placed on a no-call list.

5 **3. The Manufacturer Defendants Targeted Susceptible Prescribers
 6 and Vulnerable Patient Populations.**

7 161. As a part of their deceptive marketing scheme, the Manufacturer
 8 Defendants identified and targeted susceptible prescribers and vulnerable patient
 9 populations in the U.S., including this State and Plaintiffs' Community. For
 10 example, the Manufacturer Defendants focused their deceptive marketing on
 11 primary care doctors, who were more likely to treat chronic pain patients and
 12 prescribe them drugs, but were less likely to be educated about treating pain and
 13 the risks and benefits of opioids and therefore more likely to accept the
 14 Manufacturer Defendants' misrepresentations.

15 162. The Manufacturer Defendants also targeted vulnerable patient
 16 populations like the elderly and veterans, who tend to suffer from chronic pain.
 17 The Manufacturer Defendants targeted these vulnerable patients even though the
 18 risks of long-term opioid use were significantly greater for them. For example, the
 19 2016 CDC Guideline observes that existing evidence confirms that elderly
 20 patients taking opioids suffer from elevated fall and fracture risks, reduced renal
 21 function and medication clearance, and a smaller window between safe and unsafe
 22 dosages.¹²³ The 2016 CDC Guideline concludes that there must be "additional
 23 caution and increased monitoring" to minimize the risks of opioid use in elderly
 24 patients. *Id.* at 27. The same is true for veterans, who are more likely to use anti-
 25 anxiety drugs (benzodiazepines) for post-traumatic stress disorder, which interact
 26 dangerously with opioids.

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¹²³ 2016 CDC Guideline at 13.

1 **4. Insys Employed Fraudulent, Illegal, and Misleading Marketing**
 2 **Schemes to Promote Subsys.**

3 163. Insys's opioid, Subsys, was approved by the FDA in 2012 for
 4 "management of breakthrough pain in adult cancer patients who are already
 5 receiving and who are tolerant to around-the-clock opioid therapy for their
 6 underlying persistent cancer pain." Under FDA rules, Insys could only market
 7 Subsys for this use. Subsys consists of the highly addictive narcotic, fentanyl,
 8 administered via a sublingual (under the tongue) spray, which provides rapid-
 9 onset pain relief. It is in the class of drugs described as Transmucosal Immediate-
 10 Release Fentanyl ("TIRF").

11 164. To reduce the risk of abuse, misuse, and diversion, the FDA
 12 instituted a Risk Evaluation and Mitigation Strategy ("REMS") for Subsys and
 13 other TIRF products, such as Cephalon's Actiq and Fentora. The purpose of
 14 REMS was to educate "prescribers, pharmacists, and patients on the potential for
 15 misuse, abuse, addiction, and overdose" for this type of drug and to "ensure safe
 16 use and access to these drugs for patients who need them."¹²⁴ Prescribers must
 17 enroll in the TIRF REMS before writing a prescription for Subsys.

18 165. Since its launch, Subsys has been an extremely expensive
 19 medication, and its price continues to rise each year. Depending on a patient's
 20 dosage and frequency of use, a month's supply of Subsys could cost in the
 21 thousands of dollars.

22 166. Due to its high cost, in most instances prescribers must submit
 23 Subsys prescriptions to insurance companies or health benefit payors for prior
 24 authorization to determine whether they will pay for the drug prior to the patient
 25 attempting to fill the prescription. According to the U.S. Senate Homeland
 26 Security and Governmental Affairs Committee Minority Staff Report ("Staff

27
 28 ¹²⁴ Press Release, FDA, *FDA Approves Shared System REMS for TIRF Products*,
 Dec. 29, 2011.

1 Report”), the prior authorization process includes “confirmation that the patient
2 had an active cancer diagnosis, was being treated by an opioid (and, thus, was
3 opioid tolerant), and was being prescribed Subsys to treat breakthrough pain that
4 the other opioid could not eliminate. If any one of these factors was not present,
5 the prior authorization would be denied . . .”¹²⁵

6 167. These prior authorization requirements proved to be daunting.
7 Subsys received reimbursement approval in only approximately 30% of submitted
8 claims. In order to increase approvals, Insys created a prior authorization unit,
9 called the Insys Reimbursement Center (“IRC”), to obtain approval for Subsys
10 reimbursements. This unit employed a number of fraudulent and misleading
11 tactics to secure reimbursements, including falsifying medical histories of
12 patients, falsely claiming that patients had cancer, and providing misleading
13 information to insurers and payors regarding patients’ diagnoses and medical
14 conditions.

15 168. Subsys has proved to be extremely profitable for Insys. Insys made
16 approximately \$330 million in net revenue from Subsys last year. Between 2013
17 and 2016, the value of Insys stock rose 296%.

18 169. Since its launch in 2012, Insys aggressively worked to grow its
19 profits through fraudulent, illegal, and misleading tactics, including its
20 reimbursement-related fraud. Through its sales representatives and other
21 marketing efforts, Insys deceptively promoted Subsys as safe and appropriate for
22 uses such as neck and back pain, without disclosing the lack of approval or
23 evidence for such uses, and misrepresented the appropriateness of Subsys for
24 treatment those conditions. It implemented a kickback scheme wherein it paid
25 prescribers for fake speakers programs in exchange for prescribing Subsys. All of

²⁷ ¹²⁵ U.S. Senate Homeland Security & Governmental Affairs Committee, *Fueling an Epidemic, Insys Therapeutics and the Systemic Manipulation of Prior Authorization*, <https://www.documentcloud.org/documents/3987564-REPORT-Fueling-an-Epidemic-Insys-Therapeutics.html>.

1 these fraudulent and misleading schemes had the effect of pushing Insys's
 2 dangerous opioid onto patients who did not need it.

3 170. Insys incentivized its sales force to engage in illegal and fraudulent
 4 conduct. Many of the Insys sales representatives were new to the pharmaceutical
 5 industry and their base salaries were low compared to industry standard. The
 6 compensation structure was heavily weighted toward commissions and rewarded
 7 reps more for selling higher (and more expensive) doses of Subsys, a "highly
 8 unusual" practice because most companies consider dosing a patient-specific
 9 decision that should be made by a doctor.¹²⁶

10 171. The Insys "speakers program" was perhaps its most widespread and
 11 damaging scheme. A former Insys salesman, Ray Furchak, alleged in a qui tam
 12 action that the sole purpose of the speakers program was "in the words of his then
 13 supervisor Alec Burlakoff, 'to get money in the doctor's pocket.'" Furchak went
 14 on to explain that "[t]he catch . . . was that doctors who increased the level of
 15 Subsys prescriptions, and at higher dosages (such as 400 or 800 micrograms
 16 instead of 200 micrograms), would receive the invitations to the program—and
 17 the checks."¹²⁷ It was a pay-to-prescribe program.

18 172. Insys's sham speaker program and other fraudulent and illegal tactics
 19 have been outlined in great detail in indictments and guilty pleas of Insys
 20 executives, employees, and prescribers across the country, as well as in a number
 21 of lawsuits against the company itself.

22 173. In May of 2015, two Alabama pain specialists were arrested and
 23 charged with illegal prescription drug distribution, among other charges. The
 24 doctors were the top prescribers of Subsys, though neither were oncologists.
 25 According to prosecutors, the doctors received illegal kickbacks from Insys for
 26

27 ¹²⁶ *Id.*

28 ¹²⁷ Roddy Boyd, *Insys Therapeutics and the New 'Killing It'*", Southern
 Investigative Reporting Foundation, The Investigator, April 24, 2015.

1 prescribing Subsys. Both doctors had prescribed Subsys to treat neck, back, and
2 joint pain. In February of 2016, a former Insys sales manager pled guilty to
3 conspiracy to commit health care fraud, including engaging in a kickback scheme
4 in order to induce one of these doctors to prescribe Subsys. The plea agreement
5 states that nearly all of the Subsys prescriptions written by the doctor were off-
6 label to non-cancer patients. In May of 2017, one of the doctors was sentenced to
7 20 years in prison.

8 174. In June of 2015, a nurse practitioner in Connecticut described as the
9 state's highest Medicare prescriber of narcotics, pled guilty to receiving \$83,000
10 in kickbacks from Insys for prescribing Subsys. Most of her patients were
11 prescribed the drug for chronic pain. Insys paid the nurse as a speaker for more
12 than 70 dinner programs at approximately \$1,000 per event; however, she did not
13 give any presentations. In her guilty plea, the nurse admitted receiving the
14 speaker fees in exchange for writing prescriptions for Subsys.

15 175. In August of 2015, Insys settled a complaint brought by the Oregon
16 Attorney General. In its complaint, the Oregon Department of Justice cited Insys
17 for, among other things, misrepresenting to doctors that Subsys could be used to
18 treat migraine, neck pain, back pain, and other uses for which Subsys is neither
19 safe nor effective, and using speaking fees as kickbacks to incentivize doctors to
20 prescribe Subsys.

21 176. In August of 2016, the State of Illinois sued Insys for similar
22 deceptive and illegal practices. The Complaint alleged that Insys marketed
23 Subsys to high-volume prescribers of opioid drugs instead of to oncologists whose
24 patients experienced the breakthrough cancer pain for which the drug is indicated.
25 The Illinois Complaint also details how Insys used its speaker program to pay
26 high volume prescribers to prescribe Subsys. The speaker events took place at
27 upscale restaurants in the Chicago area, and Illinois speakers received an
28 "honorarium" ranging from \$700 to \$5,100, and they were allowed to order as

1 much food and alcohol as they wanted. At most of the events, the “speaker” being
2 paid by Insys did not speak, and, on many occasions, the only attendees at the
3 events were the speaker and an Insys sales representative.

4 177. In December of 2016, six Insys executives and managers were
5 indicted and then, in October 2017, Insys’s founder and owner was arrested and
6 charged with multiple felonies in connection with an alleged conspiracy to bribe
7 practitioners to prescribe Subsys and defraud insurance companies. A U.S.
8 Department of Justice press release explained that, among other things: “Insys
9 executives improperly influenced health care providers to prescribe a powerful
10 opioid for patients who did not need it, and without complying with FDA
11 requirements, thus putting patients at risk and contributing to the current opioid
12 crisis.”¹²⁸ A Drug Enforcement Administration (“DEA”) Special Agent in Charge
13 further explained that: “Pharmaceutical companies whose products include
14 controlled medications that can lead to addiction and overdose have a special
15 obligation to operate in a trustworthy, transparent manner, because their
16 customers’ health and safety and, indeed, very lives depend on it.”¹²⁹

17 **5. The Manufacturer Defendants made Materially Deceptive
18 Statements and Concealed Material Facts.**

19 178. As alleged herein, the Manufacturer Defendants made and/or
20 disseminated deceptive statements regarding material facts and further concealed
21 material facts, in the course of manufacturing, marketing, and selling prescription
22 opioids. The Manufacturer Defendants’ actions were intentional and/or unlawful.
23 Such statements include, but are not limited to, those set out below and alleged
24 throughout this Complaint.

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¹²⁸ Press Release, DOJ, U.S. Attorney’s Office, Dist. of Mass., *Founder and Owner of Pharmaceutical Company Insys Arrested and Charged with Racketeering* (Oct. 26, 2017), available at <https://www.justice.gov/usao-ma/pr/founder-and-owner-pharmaceutical-company-insys-arrested-and-charged-racketeering>.

27 ¹²⁹ *Id.*

1 179. Defendant Purdue made and/or disseminated deceptive statements,
2 and concealed material facts in such a way to make their statements deceptive,
3 including, but not limited to, the following:

- 4 a. Creating, sponsoring, and assisting in the distribution of patient
5 education materials distributed to consumers that contained deceptive
statements;
- 6 b. Creating and disseminating advertisements that contained deceptive
7 statements concerning the ability of opioids to improve function
long-term and concerning the evidence supporting the efficacy of
opioids long-term for the treatment of chronic non-cancer pain;
- 8 c. Disseminating misleading statements concealing the true risk of
9 addiction and promoting the deceptive concept of pseudoaddiction
10 through Purdue's own unbranded publications and on internet sites
Purdue operated that were marketed to and accessible by consumers;
- 11 d. Distributing brochures to doctors, patients, and law enforcement
12 officials that included deceptive statements concerning the indicators
of possible opioid abuse;
- 13 e. Sponsoring, directly distributing, and assisting in the distribution of
14 publications that promoted the deceptive concept of pseudoaddiction,
even for high-risk patients;
- 15 f. Endorsing, directly distributing, and assisting in the distribution of
16 publications that presented an unbalanced treatment of the long-term
and dose-dependent risks of opioids versus NSAIDs;
- 17 g. Providing significant financial support to pro-opioid KOL doctors
18 who made deceptive statements concerning the use of opioids to treat
chronic non-cancer pain;
- 19 h. Providing needed financial support to pro-opioid pain organizations
20 that made deceptive statements, including in patient education
materials, concerning the use of opioids to treat chronic non-cancer
pain;
- 21 i. Assisting in the distribution of guidelines that contained deceptive
22 statements concerning the use of opioids to treat chronic non-cancer
pain and misrepresented the risks of opioid addiction;
- 23 j. Endorsing and assisting in the distribution of CMEs containing
24 deceptive statements concerning the use of opioids to treat chronic
non-cancer pain;
- 25 k. Developing and disseminating scientific studies that misleadingly
26 concluded opioids are safe and effective for the long-term treatment
of chronic non-cancer pain and that opioids improve quality of life,
while concealing contrary data;

1. Assisting in the dissemination of literature written by pro-opioid KOLs that contained deceptive statements concerning the use of opioids to treat chronic noncancer pain;
 - m. Creating, endorsing, and supporting the distribution of patient and prescriber education materials that misrepresented the data regarding the safety and efficacy of opioids for the long-term treatment of chronic non-cancer pain, including known rates of abuse and addiction and the lack of validation for long-term efficacy;
 - n. Targeting veterans by sponsoring and disseminating patient education marketing materials that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain;
 - o. Targeting the elderly by assisting in the distribution of guidelines that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain and misrepresented the risks of opioid addiction in this population;
 - p. Exclusively disseminating misleading statements in education materials to hospital doctors and staff while purportedly educating them on new pain standards;
 - q. Making deceptive statements concerning the use of opioids to treat chronic noncancer pain to prescribers through in-person detailing; and
 - r. Withholding from law enforcement the names of prescribers Purdue believed to be facilitating the diversion of its opioid, while simultaneously marketing opioids to these doctors by disseminating patient and prescriber education materials and advertisements and CMEs they knew would reach these same prescribers.

180. Defendant Endo made and/or disseminated deceptive statements, and concealed material facts in such a way to make their statements deceptive, including, but not limited to, the following:

- a. Creating, sponsoring, and assisting in the distribution of patient education materials that contained deceptive statements;
 - b. Creating and disseminating advertisements that contained deceptive statements concerning the ability of opioids to improve function long-term and concerning the evidence supporting the efficacy of opioids long-term for the treatment of chronic non-cancer pain;
 - c. Creating and disseminating paid advertisement supplements in academic journals promoting chronic opioid therapy as safe and effective for long term use for high risk patients;
 - d. Creating and disseminating advertisements that falsely and inaccurately conveyed the impression that Endo's opioids would provide a reduction in oral, intranasal, or intravenous abuse;
 - e. Disseminating misleading statements concealing the true risk of addiction and promoting the misleading concept of pseudoaddiction

- through Endo's own unbranded publications and on internet sites Endo sponsored or operated;
- f. Endorsing, directly distributing, and assisting in the distribution of publications that presented an unbalanced treatment of the long-term and dose-dependent risks of opioids versus NSAIDs;
 - g. Providing significant financial support to pro-opioid KOLs, who made deceptive statements concerning the use of opioids to treat chronic non-cancer pain;
 - h. Providing needed financial support to pro-opioid pain organizations – including over \$5 million to the organization responsible for many of the most egregious misrepresentations – that made deceptive statements, including in patient education materials, concerning the use of opioids to treat chronic non-cancer pain;
 - i. Targeting the elderly by assisting in the distribution of guidelines that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain and misrepresented the risks of opioid addiction in this population;
 - j. Endorsing and assisting in the distribution of CMEs containing deceptive statements concerning the use of opioids to treat chronic non-cancer pain;
 - k. Developing and disseminating scientific studies that deceptively concluded opioids are safe and effective for the long-term treatment of chronic non-cancer pain and that opioids improve quality of life, while concealing contrary data;
 - l. Directly distributing and assisting in the dissemination of literature written by pro-opioid KOLs that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain, including the concept of pseudoaddiction;
 - m. Creating, endorsing, and supporting the distribution of patient and prescriber education materials that misrepresented the data regarding the safety and efficacy of opioids for the long-term treatment of chronic non-cancer pain, including known rates of abuse and addiction and the lack of validation for long-term efficacy; and
 - n. Making deceptive statements concerning the use of opioids to treat chronic non-cancer pain to prescribers through in-person detailing.

181. Defendant Janssen made and/or disseminated deceptive statements, and concealed material facts in such a way to make their statements deceptive, including, but not limited to, the following:
- a. Creating, sponsoring, and assisting in the distribution of patient education materials that contained deceptive statements;
 - b. Directly disseminating deceptive statements through internet sites over which Janssen exercised final editorial control and approval stating that opioids are safe and effective for the long-term treatment

- of chronic non-cancer pain and that opioids improve quality of life, while concealing contrary data;
- c. Disseminating deceptive statements concealing the true risk of addiction and promoting the deceptive concept of pseudoaddiction through internet sites over which Janssen exercised final editorial control and approval;
 - d. Promoting opioids for the treatment of conditions for which Janssen knew, due to the scientific studies it conducted, that opioids were not efficacious and concealing this information;
 - e. Sponsoring, directly distributing, and assisting in the dissemination of patient education publications over which Janssen exercised final editorial control and approval, which presented an unbalanced treatment of the long-term and dose dependent risks of opioids versus NSAIDs;
 - f. Providing significant financial support to pro-opioid KOLs, who made deceptive statements concerning the use of opioids to treat chronic non-cancer pain;
 - g. Providing necessary financial support to pro-opioid pain organizations that made deceptive statements, including in patient education materials, concerning the use of opioids to treat chronic non-cancer pain;
 - h. Targeting the elderly by assisting in the distribution of guidelines that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain and misrepresented the risks of opioid addiction in this population;
 - i. Targeting the elderly by sponsoring, directly distributing, and assisting in the dissemination of patient education publications targeting this population that contained deceptive statements about the risks of addiction and the adverse effects of opioids, and made false statements that opioids are safe and effective for the long-term treatment of chronic non-cancer pain and improve quality of life, while concealing contrary data;
 - j. Endorsing and assisting in the distribution of CMEs containing deceptive statements concerning the use of opioids to treat chronic non-cancer pain;
 - k. Directly distributing and assisting in the dissemination of literature written by pro-opioid KOLs that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain, including the concept of pseudoaddiction;
 - l. Creating, endorsing, and supporting the distribution of patient and prescriber education materials that misrepresented the data regarding the safety and efficacy of opioids for the long-term treatment of chronic non-cancer pain, including known rates of abuse and addiction and the lack of validation for long-term efficacy;

- m. Targeting veterans by sponsoring and disseminating patient education marketing materials that contained deceptive statements concerning the use of opioids to treat chronic non-cancer pain; and

- n. Making deceptive statements concerning the use of opioids to treat chronic non-cancer pain to prescribers through in-person detailing.

182. Defendant Cephalon made and/or disseminated untrue, false and deceptive statements, and concealed material facts in such a way to make their statements deceptive, including, but not limited to, the following:

- a. Creating, sponsoring, and assisting in the distribution of patient education materials that contained deceptive statements;
 - b. Sponsoring and assisting in the distribution of publications that promoted the deceptive concept of pseudoaddiction, even for high-risk patients;
 - c. Providing significant financial support to pro-opioid KOL doctors who made deceptive statements concerning the use of opioids to treat chronic non-cancer pain and breakthrough chronic non-cancer pain;
 - d. Developing and disseminating scientific studies that deceptively concluded opioids are safe and effective for the long-term treatment of chronic non-cancer pain in conjunction with Cephalon's potent rapid-onset opioids;
 - e. Providing needed financial support to pro-opioid pain organizations that made deceptive statements, including in patient education materials, concerning the use of opioids to treat chronic non-cancer pain;
 - f. Endorsing and assisting in the distribution of CMEs containing deceptive statements concerning the use of opioids to treat chronic non-cancer pain;
 - g. Endorsing and assisting in the distribution of CMEs containing deceptive statements concerning the use of Cephalon's rapid-onset opioids;
 - h. Directing its marketing of Cephalon's rapid-onset opioids to a wide range of doctors, including general practitioners, neurologists, sports medicine specialists, and workers' compensation programs, serving chronic pain patients;
 - i. Making deceptive statements concerning the use of Cephalon's opioids to treat chronic non-cancer pain to prescribers through in-person detailing and speakers' bureau events, when such uses are unapproved and unsafe; and
 - j. Making deceptive statements concerning the use of opioids to treat chronic non-cancer pain to prescribers through in-person detailing and speakers' bureau events.

1 183. Defendant Actavis made and/or disseminated deceptive statements,
2 and concealed material facts in such a way to make their statements deceptive,
3 including, but not limited to, the following:

- 4 a. Making deceptive statements concerning the use of opioids to treat
5 chronic non-cancer pain to prescribers through in-person detailing;
6 b. Creating and disseminating advertisements that contained deceptive
7 statements that opioids are safe and effective for the long-term
treatment of chronic non-cancer pain and that opioids improve
quality of life;
8 c. Creating and disseminating advertisements that concealed the risk of
9 addiction in the long-term treatment of chronic, non-cancer pain; and
10 d. Developing and disseminating scientific studies that deceptively
11 concluded opioids are safe and effective for the long-term treatment
of chronic non-cancer pain and that opioids improve quality of life
while concealing contrary data.

12 **6. The Manufacturer Defendants Fraudulently Concealed Their
13 Misconduct.**

14 184. The Manufacturer Defendants, both individually and collectively,
15 made, promoted, and profited from their misrepresentations about the risks and
16 benefits of opioids for chronic pain even though they knew that their
17 misrepresentations were false and deceptive. The history of opioids, as well as
18 research and clinical experience establish that opioids are highly addictive and are
19 responsible for a long list of very serious adverse outcomes. The FDA warned
20 Defendants of this, and Defendants had access to scientific studies, detailed
21 prescription data, and reports of adverse events, including reports of addiction,
22 hospitalization, and death – all of which clearly described the harm from long-
23 term opioid use and that patients were suffering from addiction, overdose, and
24 death in alarming numbers. More recently, the FDA and CDC have issued
25 pronouncements, based on medical evidence, that conclusively expose the falsity
26 of Defendants' misrepresentations, and Endo and Purdue have recently entered
27 into agreements in New York prohibiting them from making some of the same
28 misrepresentations described in this Complaint.

1 185. At all times relevant to this Complaint, the Manufacturer Defendants
2 took steps to avoid detection of and to fraudulently conceal their deceptive
3 marketing and unlawful, unfair, and fraudulent conduct. For example, the
4 Manufacturer Defendants disguised their role in the deceptive marketing of
5 chronic opioid therapy by funding and working through third parties like Front
6 Groups and KOLs. The Manufacturer Defendants purposefully hid behind the
7 assumed credibility of these individuals and organizations and relied on them to
8 vouch for the accuracy and integrity of the Manufacturer Defendants' false and
9 deceptive statements about the risks and benefits of long-term opioid use for
10 chronic pain. Defendants also never disclosed their role in shaping, editing, and
11 approving the content of information and materials disseminated by these third
12 parties. The Manufacturer Defendants exerted considerable influence on these
13 promotional and "educational" materials in emails, correspondence, and meetings
14 with KOLs, Front Groups, and public relations companies that were not, and have
15 not yet become, public. For example, PainKnowledge.org, which is run by the
16 NIPC, did not disclose Endo's involvement. Other Manufacturer Defendants, such
17 as Purdue and Janssen, ran similar websites that masked their own role.

18 186. Finally, the Manufacturer Defendants manipulated their promotional
19 materials and the scientific literature to make it appear that these documents were
20 accurate, truthful, and supported by objective evidence when they were not. The
21 Manufacturer Defendants distorted the meaning or import of studies they cited
22 and offered them as evidence for propositions the studies did not support. The
23 Manufacturer Defendants invented "pseudoaddiction" and promoted it to an
24 unsuspecting medical community. The Manufacturer Defendants provided the
25 medical community with false and misleading information about ineffectual
26 strategies to avoid or control opioid addiction. The Manufacturer Defendants
27 recommended to the medical community that dosages be increased, without
28 disclosing the risks. The Manufacturer Defendants spent millions of dollars over a

1 period of years on a misinformation campaign aimed at highlighting opioids'
2 alleged benefits, disguising the risks, and promoting sales. The lack of support for
3 the Manufacturer Defendants' deceptive messages was not apparent to medical
4 professionals who relied upon them in making treatment decisions, nor could it
5 have been detected by the Plaintiffs or Plaintiffs' Community. Thus, the
6 Manufacturer Defendants successfully concealed from the medical community,
7 patients, and health care payors facts sufficient to arouse suspicion of the claims
8 that the Plaintiffs now assert. Plaintiffs did not know of the existence or scope of
9 the Manufacturer Defendants' industry-wide fraud and could not have acquired
10 such knowledge earlier through the exercise of reasonable diligence.

11 **C. THE DISTRIBUTOR DEFENDANTS' UNLAWFUL DISTRIBUTION
12 OF OPIOIDS.**

13 187. The Distributor Defendants owe a duty under both federal law (21
14 U.S.C. § 823, 21 CFR 1301.74) and California law (*see, e.g.*, Cal. Bus. & Prof.
15 Code § 4169.1) to monitor, detect, investigate, refuse to fill, and report suspicious
16 orders of prescription opioids originating from Plaintiffs' Community as well as
17 those orders which the Distributor Defendants knew or should have known were
18 likely to be diverted into Plaintiffs' Community.

19 188. The foreseeable harm from a breach of these duties is the diversion of
20 prescription opioids for nonmedical purposes.

21 189. Each Distributor Defendant repeatedly and purposefully breached its
22 duties under state and federal law. Such breaches are a direct and proximate cause
23 of the widespread diversion of prescription opioids for nonmedical purposes into
24 Plaintiffs' Community.

25 190. The unlawful diversion of prescription opioids is a direct and
26 proximate cause and/or substantial contributing factor to the opioid epidemic,
27 prescription opioid abuse, addiction, morbidity and mortality in the State and in
28

1 Plaintiffs' Community. This diversion and the epidemic are direct causes of harms
2 for which Plaintiffs seek to recover here.

3 191. The opioid epidemic in the State, including *inter alia* in Plaintiffs'
4 Community, remains an immediate ***hazard to public health and safety***.

5 192. The opioid epidemic in Plaintiffs' Community is a temporary and
6 continuous ***public nuisance*** and remains unabated.

7 193. The Distributor Defendants intentionally continued their conduct, as
8 alleged herein, with knowledge that such conduct was creating the opioid nuisance
9 and causing the harms and damages alleged herein.

10 **1. Wholesale Drug Distributors Have a Duty under State and**
11 **Federal Law to Guard Against, and Report, Unlawful Diversion**
12 **and to Report and Prevent Suspicious Orders.**

13 194. As under federal law, opioids are a Schedule II controlled substance
14 under California law. *See* Cal. Health & Safety Code § 11055. Opioids are
15 categorized as "Schedule II" drugs because they have a "high potential for abuse"
16 and the potential to cause "severe psychic or physical dependence" and/or "severe
17 psychological . . . dependence." 21 U.S.C. § 812(b)(2)(A)-(C).

18 195. California law required Distributor Defendants to be licensed by the
19 California State Board of Pharmacy. Cal. Bus. & Prof. Code § 4160; Cal. Bus. &
20 Prof. Code § 4161. California law required Manufacturer Defendants to be
21 licensed by the State Department of Health Services. Cal. Health & Safety Code §
22 111615.

23 196. The California State Board of Pharmacy has the authority to "deny,
24 revoke, or suspend any license" issued to out-of-state manufacturers or wholesale
25 distributors who violate the Pharmacy Law or the state's Sherman Food, Drug and
26 Cosmetic Law. Cal. Bus. & Prof. Code § 4304.

27

28

1 197. It is unlawful under California law for a distributor or manufacturer
2 to “furnish controlled substances for other than legitimate medical purposes.” Cal.
3 Health & Safety Code § 11153.5.

4 198. The California State Board of Pharmacy has the authority to “take
5 action against any holder of a license who is guilty of unprofessional conduct”
6 which includes “clearly excessive furnishing of controlled substances” for other
7 than legitimate medical purposes. Cal. Bus. & Prof. Code § 4301(e) (citing Cal.
8 Health & Safety Code § 11153.5). “Factors to be considered in determining
9 whether the furnishing of controlled substances is clearly excessive shall include,
10 but not be limited to, the amount of controlled substances furnished, the previous
11 ordering pattern of the customer (including size and frequency of orders), the type
12 and size of the customer, and where and to whom the customer distributes its
13 product.” *Id.*

14 199. Other examples of unprofessional conduct include procuring a
15 license by fraud or misrepresentation, gross negligence, fraud, making or signing
16 documents with false statements, and violating any state or federal statute or rule
17 regulating controlled substances. Cal. Bus. & Prof. Code § 4301.

18 200. California requires manufacturers and distributors of controlled
19 substances to maintain records of the manufacture and sale of dangerous drugs.
20 *See* Cal. Bus. & Prof. Code §§ 4081; 4161(c)(2)(A); 4332; Cal. Code Regs. tit. 16,
21 §§ 1780(f); 1783(e).

22 201. Furthermore, California law incorporates federal requirements set out
23 under the Controlled Substance Act and related controlled substance laws and
24 regulations. *See* Cal. Bus. & Prof. Code §§ 4160(d) (representative-in-charge of
25 wholesaler is responsible for wholesaler’s compliance with applicable state and
26 federal laws); 4301(j) (unprofessional conduct includes violating federal laws
27 related to controlled substances); 4301(o) (unprofessional conduct includes
28 violating, attempting to violate, assisting in or abetting or conspiring to violate any

1 applicable federal law); Cal. Code Regs. tit. 16, § 1780(f)(2) (records required for
2 identifying, recording and reporting losses or thefts shall be in accordance with
3 federal regulations).

4 202. Each Distributor Defendant was further required to register with the
5 DEA, pursuant to the federal Controlled Substance Act. *See* 21 U.S.C. § 823(b),
6 (e); 28 C.F.R. § 0.100. Each Distributor Defendant is a “registrant” as a
7 wholesale distributor in the chain of distribution of Schedule II controlled
8 substances with a duty to comply with all security requirements imposed under
9 that statutory scheme. California law adopts and incorporates those requirements,
10 as set out above. *See, e.g.*, Cal. Code Regs. tit. 16, 1780(f)(2).

11 203. Each Distributor Defendant has an affirmative duty under federal and
12 California law to act as a gatekeeper guarding against the diversion of the highly
13 addictive, dangerous opioid drugs. Federal law requires that Distributors of
14 Schedule II drugs, including opioids, must maintain “effective control against
15 diversion of particular controlled substances into other than legitimate medical,
16 scientific, and industrial channels.” 21 U.S.C. §§ 823(b)(1). California law
17 requires that “[t]he following minimum standards shall apply to all wholesale
18 establishments for which permits have been issued by the Board: . . . (c)(2) All
19 facilities shall be equipped with a security system that will provide suitable
20 protection against theft and diversion.” Cal. Code Regs. Tit. 16 § 1780(c)(2). In
21 addition, drug distributors shall “establish, maintain, and adhere to written policies
22 and procedures, which shall be followed for the receipt, security, storage,
23 inventory, and distribution of prescription drugs, including policies and
24 procedures for identifying, recording, and reporting losses or thefts[.]” Cal. Code
25 Regs. Tit. 16 § 1780(f)(1).

26 204. The California Legislature has found that “Protection of the public
27 shall be the highest priority for the California State Board of Pharmacy in
28 exercising its licensing, regulatory, and disciplinary functions. Whenever the

1 protection of the public is inconsistent with other interests sought to be promoted,
2 the protection of the public shall be paramount.” Cal. Bus. & Prof. Code § 4001.1.

3 205. Federal regulations and California law impose a non-delegable duty
4 upon wholesale drug distributors to “design and operate a system to disclose to the
5 registrant suspicious orders of controlled substances. The registrant [distributor]
6 shall inform the Field Division Office of the Administration in his area of
7 suspicious orders when discovered by the registrant. Suspicious orders include
8 orders of unusual size, orders deviating substantially from a normal pattern, and
9 orders of unusual frequency.” 21 C.F.R. § 1301.74(b). *See also* Cal. Bus. & Prof.
10 Code § 4169.1 (“A wholesaler, upon discovery, shall notify the board in writing of
11 any suspicious orders of controlled substances placed by a California-licensed
12 pharmacy or wholesaler by providing the board a copy of the information that the
13 wholesaler provides to the United States Drug Enforcement Administration.”);
14 Cal. Health & Safety Code § 11153.5(c) (factors considered in determining if
15 distributor or manufacturer furnished controlled substances with a conscious
16 disregard that they were being used for other than legitimate medical purposes
17 include the amount of controlled substances furnished, the size and frequency of
18 previous orders, the type and size of customer and where the customer distributes
19 the product).

20 206. “Suspicious orders” include orders of an unusual size, orders of
21 unusual frequency or orders deviating substantially from a normal pattern. *See* 21
22 CFR 1301.74(b); *see also* Cal. Bus. & Prof. Code § 4169.1. These criteria are
23 disjunctive and are not all inclusive. For example, if an order deviates
24 substantially from a normal pattern, the size of the order does not matter and the
25 order should be reported as suspicious. Likewise, a wholesale distributor need not
26 wait for a normal pattern to develop over time before determining whether a
27 particular order is suspicious. The size of an order alone, regardless of whether it
28 deviates from a normal pattern, is enough to trigger the wholesale distributor’s

1 responsibility to report the order as suspicious. The determination of whether an
 2 order is suspicious depends not only on the ordering patterns of the particular
 3 customer but also on the patterns of the entirety of the wholesale distributor's
 4 customer base and the patterns throughout the relevant segment of the wholesale
 5 distributor industry.

6 207. In addition to reporting all suspicious orders, distributors must also
 7 stop shipment on any order which is flagged as suspicious and only ship orders
 8 which were flagged as potentially suspicious if, after conducting due diligence,
 9 the distributor can determine that the order is not likely to be diverted into illegal
 10 channels. *See Southwood Pharm., Inc.*, 72 Fed. Reg. 36,487, 36,501 (Drug Enf't
 11 Admin. July 3, 2007); *Masters Pharmaceutical, Inc. v. Drug Enforcement*
 12 *Administration*, No. 15-11355 (D.C. Cir. June 30, 2017). Regardless, all flagged
 13 orders must be reported. *Id.*

14 208. These prescription drugs are regulated for the purpose of providing a
 15 "closed" system **intended to reduce the widespread diversion of these drugs**
 16 **out of legitimate channels into the illicit market**, while at the same time
 17 providing the legitimate drug industry with a unified approach to narcotic and
 18 dangerous drug control.¹³⁰

19 209. Different entities supervise the discrete links in the chain that
 20 separate a consumer from a controlled substance. Statutes and regulations define
 21 each participant's role and responsibilities.¹³¹

22
 23¹³⁰ See 1970 U.S.C.C.A.N. 4566, 4571-72.

24¹³¹ Brief for Healthcare Distribution Management Association and National
 25 Association of Chain Drug Stores as Amici Curiae in Support of Neither Party,
Masters Pharm., Inc. v. U.S. Drug Enf't Admin. (No. 15-1335) (D.C. Cir. Apr. 4,
 26 2016), 2016 WL 1321983, at *22 [hereinafter Brief for HDMA and NACDS]. The
 27 Healthcare Distribution Management Association (HDMA or HMA)—now known
 28 as the Healthcare Distribution Alliance (HDA)—is a national, not-for-profit trade
 association that represents the nation's primary, full-service healthcare distributors
 whose membership includes, among others: AmerisourceBergen Drug
 Corporation, Cardinal Health, Inc., and McKesson Corporation. *See generally*
HDA, About, <https://www.healthcaredistribution.org/about> (last visited Aug. 21,
 2017). The National Association of Chain Drug Stores (NACDS) is a national,

1 210. As the DEA advised the Distributor Defendants in a letter to them
 2 dated September 27, 2006, wholesale distributors are “one of the key components
 3 of the distribution chain. If the closed system is to function properly ...
 4 distributors must be vigilant in deciding whether a prospective customer can be
 5 trusted to deliver controlled substances only for lawful purposes. This
 6 responsibility is critical, as ... the illegal distribution of controlled substances has
 7 a substantial and detrimental effect on the health and general welfare of the
 8 American people.”¹³²

9 211. The Distributor Defendants have admitted that they are responsible
 10 for reporting suspicious orders.¹³³

11 212. The DEA sent a letter to each of the Distributor Defendants on
 12 September 27, 2006, warning that it would use its authority to revoke and suspend
 13 registrations when appropriate. The letter expressly states that a distributor, *in*
 14 *addition* to reporting suspicious orders, has a “statutory responsibility to exercise
 15 due diligence to avoid filling suspicious orders that might be diverted into other
 16 than legitimate medical, scientific, and industrial channels.”¹³⁴ The letter also
 17

18 not-for-profit trade association that represents traditional drug stores and
 19 supermarkets and mass merchants with pharmacies whose membership includes,
 20 among others: Walgreen Company, CVS Health, Rite Aid Corporation and
 Walmart. *See generally* NACDS, *Mission*, <https://www.nacds.org/about/mission/>
 (last visited Aug. 21, 2017).

21 ¹³² *See Letter from Joseph T. Rannazzisi, Deputy Assistant Adm'r, Office of*
 22 *Diversion Control, Drug. Enf't Admin., U.S. Dep't of Justice, to Cardinal Health*
 23 *(Sept. 27, 2006) [hereinafter Rannazzisi Letter] (“This letter is being sent to every*
 24 *commercial entity in the United States registered with the Drug Enforcement*
 25 *Agency (DEA) to distribute controlled substances. The purpose of this letter is to*
 26 *reiterate the responsibilities of controlled substance distributors in view of the*
 27 *prescription drug abuse problem our nation currently faces.”), filed in* *Cardinal*
Health, Inc. v. Holder, No. 1:12-cv-00185-RBW (D.D.C. Feb. 10, 2012), ECF No.
 28 14-51.

21 ¹³³ *See Brief for HDMA and NACDS, 2016 WL 1321983, at *4*
 22 *(“[R]egulations . . . in place for more than 40 years require distributors to report*
 23 *suspicious orders of controlled substances to DEA based on information readily*
 24 *available to them (e.g., a pharmacy’s placement of unusually frequent or large*
 25 *orders).”).*

26 ¹³⁴ Rannazzisi Letter, at 2.

1 instructs that “distributors must be vigilant in deciding whether a prospective
2 customer can be trusted to deliver controlled substances only for lawful
3 purposes.”¹³⁵ The DEA warns that “even just one distributor that uses its DEA
4 registration to facilitate diversion can cause enormous harm.”¹³⁶

5 213. The DEA sent a second letter to each of the Distributor Defendants
6 on December 27, 2007.¹³⁷ This letter reminds the Defendants of their statutory and
7 regulatory duties to “maintain effective controls against diversion” and “design
8 and operate a system to disclose to the registrant suspicious orders of controlled
9 substances.”¹³⁸ The letter further explains:

The regulation also requires that the registrant inform the local DEA Division Office of suspicious orders when discovered by the registrant. Filing a monthly report of completed transactions (e.g., “excessive purchase report” or “high unity purchases”) does not meet the regulatory requirement to report suspicious orders. Registrants are reminded that their responsibility does not end merely with the filing of a suspicious order report. Registrants must conduct an independent analysis of suspicious orders prior to completing a sale to determine whether the controlled substances are likely to be diverted from legitimate channels. Reporting an order as suspicious will not absolve the registrant of responsibility if the registrant knew, or should have known, that the controlled substances were being diverted.

The regulation specifically states that suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of an unusual frequency. These criteria are disjunctive and are not all inclusive. For example, if an order deviates substantially from a normal pattern, the size of the order does not matter and the order should be reported as suspicious. Likewise, a registrant need not wait for a "normal pattern" to develop over time before determining whether a particular order is suspicious. The size of an order alone, whether or not it deviates from a normal pattern, is enough to trigger the registrant's responsibility to report the order as suspicious. The determination of whether an order is suspicious depends not only on the ordering patterns of the particular customer,

135 *Id.* at 1.

25 | ^{136}Id at 2

²⁶ ¹³⁷ See Letter from Joseph T. Rannazzisi, Deputy Assistant Adm'r, Office of
Diversion Control, Drug. Enf't Admin., U.S. Dep't of Justice, to Cardinal Health
(Dec. 27, 2007), filed in *Cardinal Health, Inc. v. Holder*, No. 1:12-cv-00185-RBW
(D.D.C. Feb. 10, 2012), ECF No. 14-8.

28 || 138 *Id.*

1 but also on the patterns of the registrant's customer base and the
 2 patterns throughout the segment of the regulated industry.

3 Registrants that rely on rigid formulas to define whether an order is
 4 suspicious may be failing to detect suspicious orders. For example, a
 5 system that identifies orders as suspicious only if the total amount of a
 6 controlled substance ordered during one month exceeds the amount
 7 ordered the previous month by a certain percentage or more is
 8 insufficient. This system fails to identify orders placed by a pharmacy
 9 if the pharmacy placed unusually large orders from the beginning of
 10 its relationship with the distributor. Also, this system would not
 11 identify orders as suspicious if the order were solely for one highly
 12 abused controlled substance if the orders never grew substantially.
 13 Nevertheless, ordering one highly abused controlled substance and
 14 little or nothing else deviates from the normal pattern of what
 15 pharmacies generally order.

16 When reporting an order as suspicious, registrants must be clear in
 17 their communication with DEA that the registrant is actually
 18 characterizing an order as suspicious. Daily, weekly, or monthly
 19 reports submitted by registrant indicating "excessive purchases" do
 20 not comply with the requirement to report suspicious orders, even if
 21 the registrant calls such reports "suspicious order reports."

22 Lastly, registrants that routinely report suspicious orders, yet fill these
 23 orders without first determining that order is not being diverted into
 24 other than legitimate medical, scientific, and industrial channels, may
 25 be failing to maintain effective controls against diversion. Failure to
 26 maintain effective controls against diversion is inconsistent with the
 27 public interest as that term is used in 21 USC 823 and 824, and may
 28 result in the revocation of the registrant's DEA Certificate of
 Registration.¹³⁹

29 Finally, the DEA letter references the Revocation of Registration issued in
 30 *Southwood Pharmaceuticals, Inc.*, 72 Fed. Reg. 36,487-01 (July 3, 2007), which
 31 discusses the obligation to report suspicious orders and "some criteria to use when
 32 determining whether an order is suspicious."¹⁴⁰

33 214. The Distributor Defendants admit that they "have not only statutory
 34 and regulatory responsibilities to detect and prevent diversion of controlled
 35 prescription drugs, but undertake such efforts as responsible members of
 36 society."¹⁴¹

37 ¹³⁹ *Id.*

38 ¹⁴⁰ *Id.*

39 ¹⁴¹ See Brief of HDMA, 2012 WL 1637016, at *2.

1 215. The Distributor Defendants knew they were required to monitor,
 2 detect, and halt suspicious orders. Industry compliance guidelines established by
 3 the Healthcare Distribution Management Association, the trade association of
 4 pharmaceutical distributors, explain that distributors are “[a]t the center of a
 5 sophisticated supply chain” and therefore “are uniquely situated to perform due
 6 diligence in order to help support the security of the controlled substances they
 7 deliver to their customers.” The guidelines set forth recommended steps in the
 8 “due diligence” process, and note in particular: If an order meets or exceeds a
 9 distributor’s threshold, as defined in the distributor’s monitoring system, or is
 10 otherwise characterized by the distributor as an order of interest, the distributor
 11 should not ship to the customer, in fulfillment of that order, any units of the
 12 specific drug code product as to which the order met or exceeded a threshold or as
 13 to which the order was otherwise characterized as an order of interest.¹⁴²

14 216. Each of the Distributor Defendants sold prescription opioids,
 15 including hydrocodone and/or oxycodone, to retailers in Plaintiffs’ Community
 16 and/or to retailers from which Defendants knew prescription opioids were likely
 17 to be diverted to Plaintiffs’ Community.

18 217. Each Distributor Defendant owes a duty to monitor and detect
 19 suspicious orders of prescription opioids.

20 218. Each Distributor Defendant owes a duty under federal and state law
 21 to investigate and refuse suspicious orders of prescription opioids.

22 219. Each Distributor Defendant owes a duty under federal and state law
 23 to report suspicious orders of prescription opioids.

24
 25
 26
 27 ¹⁴² Healthcare Distribution Management Association (HDMA) Industry
 28 Compliance Guidelines: Reporting Suspicious Orders and Preventing Diversion of
 Controlled Substances, filed in *Cardinal Health, Inc. v. Holder*, No. 12-5061 (D.C.
 Cir. Mar. 7, 2012), Doc. No. 1362415 (App’x B).

1 220. Each Distributor Defendant owes a duty under federal and state law
 2 to prevent the diversion of prescription opioids into illicit markets in the State and
 3 Plaintiffs' Community.

4 221. The foreseeable harm resulting from a breach of these duties is the
 5 diversion of prescription opioids for nonmedical purposes and subsequent plague
 6 of opioid addiction.

7 222. The foreseeable harm resulting from the diversion of prescription
 8 opioids for nonmedical purposes is abuse, addiction, morbidity and mortality in
 9 Plaintiffs' Community and the damages caused thereby.

10 **2. The Distributor Defendants Breached Their Duties.**

11 223. Because distributors handle such large volumes of controlled
 12 substances, and are the first major line of defense in the movement of legal
 13 pharmaceutical controlled substances from legitimate channels into the illicit
 14 market, it is incumbent on distributors to maintain effective controls to prevent
 15 diversion of controlled substances. Should a distributor deviate from these checks
 16 and balances, the closed system collapses.¹⁴³

17 224. The sheer volume of prescription opioids distributed to pharmacies in
 18 the Plaintiffs' Community, and/or to pharmacies from which the Distributor
 19 Defendants knew the opioids were likely to be diverted into Plaintiffs'
 20 Community, is excessive for the medical need of the community and facially
 21 suspicious. Some red flags are so obvious that no one who engages in the
 22 legitimate distribution of controlled substances can reasonably claim ignorance of
 23 them.¹⁴⁴

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¹⁴³ See Rannazzisi Decl. ¶ 10, filed in *Cardinal Health, Inc. v. Holder*, No. 1:12-cv-00185-RBW (D.D.C. Feb. 10, 2012), ECF No. 14-2.

27

¹⁴⁴ *Masters Pharmaceuticals, Inc.*, 80 Fed. Reg. 55,418-01, 55,482 (Sept. 15, 2015) (citing *Holiday CVS, L.L.C., d/b/a CVS/Pharmacy Nos. 219 and 5195*, 77 Fed. Reg. 62,316, 62,322 (2012)).

1 225. The Distributor Defendants failed to report “suspicious orders”
2 originating from Plaintiffs’ Community, or which the Distributor Defendants
3 knew were likely to be diverted to Plaintiffs’ Community, to the federal and state
4 authorities, including the DEA and/or the state Board of Pharmacy.

5 226. The Distributor Defendants unlawfully filled suspicious orders of
6 unusual size, orders deviating substantially from a normal pattern and/or orders of
7 unusual frequency in Plaintiffs’ Community, and/or in areas from which the
8 Distributor Defendants knew opioids were likely to be diverted to Plaintiffs’
9 Community.

10 227. The Distributor Defendants breached their duty to monitor, detect,
11 investigate, refuse and report suspicious orders of prescription opiates originating
12 from Plaintiffs’ Community, and/or in areas from which the Distributor
13 Defendants knew opioids were likely to be diverted to Plaintiffs’ Community.

14 228. The Distributor Defendants breached their duty to maintain effective
15 controls against diversion of prescription opiates into other than legitimate
16 medical, scientific, and industrial channels.

17 229. The Distributor Defendants breached their duty to “design and
18 operate a system to disclose to the registrant suspicious orders of controlled
19 substances” and failed to inform the authorities including the DEA of suspicious
20 orders when discovered, in violation of their duties under federal and state law.

21 230. The Distributor Defendants breached their duty to exercise due
22 diligence to avoid filling suspicious orders that might be diverted into channels
23 other than legitimate medical, scientific and industrial channels.¹⁴⁵

24 231. The federal and state laws at issue here are public safety laws.

25 232. The Distributor Defendants’ violations of public safety statutes
26 constitute *prima facie* evidence of negligence under State law.

27
28

¹⁴⁵ See *Cardinal Health, Inc. v. Holder*, 846 F. Supp. 2d 203, 206 (D.D.C. 2012).

1 233. The Distributor Defendants supplied prescription opioids to
2 obviously suspicious physicians and pharmacies, enabled the illegal diversion of
3 opioids, aided criminal activity, and disseminated massive quantities of
4 prescription opioids into the black market.

5 234. The unlawful conduct by the Distributor Defendants is purposeful
6 and intentional. The Distributor Defendants refuse to abide by the duties imposed
7 by federal and state law which are required to legally acquire and maintain a
8 license to distribute prescription opiates.

9 235. The Distributor Defendants acted with actual malice in breaching
10 their duties, *i.e.*, they have acted with a conscious disregard for the rights and
11 safety of other persons, and said actions have a great probability of causing
12 substantial harm.

13 236. The Distributor Defendants' repeated shipments of suspicious orders,
14 over an extended period of time, in violation of public safety statutes, and without
15 reporting the suspicious orders to the relevant authorities demonstrates wanton,
16 willful, or reckless conduct or criminal indifference to civil obligations affecting
17 the rights of others.

18 **3. The Distributor Defendants Have Sought to Avoid and Have
19 Misrepresented their Compliance with Their Legal Duties.**

20 237. The Distributor Defendants have repeatedly misrepresented their
21 compliance with their legal duties under state and federal law and have wrongfully
22 and repeatedly disavowed those duties in an effort to mislead regulators and the
23 public regarding the Distributor Defendants' compliance with their legal duties.

24 238. Distributor Defendants have refused to recognize any duty beyond
25 *reporting* suspicious orders. In *Masters Pharmaceuticals*, the HDMA, a trade
26 association run by the Distributor Defendants, and the NACDS submitted amicus
27 briefs regarding the legal duty of wholesale distributors. Inaccurately denying the
28

1 legal duties that the wholesale drug industry has been tragically recalcitrant in
 2 performing, they argued as follows:

- 3 a. The Associations complained that the “DEA has required distributors
 4 not only to report suspicious orders, but to *investigate* orders (e.g., by
 5 interrogating pharmacies and physicians) and take action to *halt*
 6 suspicious orders before they are filled.”¹⁴⁶
- 7 b. The Associations argued that, “DEA now appears to have changed its
 8 position to require that distributors not only *report* suspicious orders,
 9 but *investigate* and *halt* suspicious orders. Such a change in agency
 10 position must be accompanied by an acknowledgment of the change
 11 and a reasoned explanation for it. In other words, an agency must
 12 display awareness that it *is* changing position and show that there are
 13 good reasons for the new policy. This is especially important here,
 14 because imposing intrusive obligations on distributors threatens to
 15 disrupt patient access to needed prescription medications.”¹⁴⁷
- 16 c. The Associations alleged (inaccurately) that nothing “requires
 17 distributors to investigate the legitimacy of orders, or to halt
 18 shipment of any orders deemed to be suspicious.”¹⁴⁸
- 19 d. The Association complained that the purported “practical infeasibility
 20 of requiring distributors to investigate and halt suspicious orders (as
 21 well as report them) underscores the importance of ensuring that
 22 DEA has complied with the APA before attempting to impose such
 23 duties.”¹⁴⁹
- 24 e. The Associations alleged (inaccurately) that “DEA’s regulations []
 25 sensibly impose[] a duty on distributors simply to *report* suspicious
 26 orders, but left it to DEA and its agents to investigate and halt
 27 suspicious orders.”¹⁵⁰
- 28 f. Also inaccurately, the Associations argued that, “[i]mposing a duty
 29 on distributors – which lack the patient information and the necessary
 30 medical expertise – to investigate and halt orders may force
 31 distributors to take a shot-in-the-dark approach to complying with
 32 DEA’s demands.”¹⁵¹

24 ¹⁴⁶ Brief for HDMA and NACDS, 2016 WL 1321983, at *4–5.
 25

26 ¹⁴⁷ *Id.* at *8 (citations and quotation marks omitted).

27 ¹⁴⁸ *Id.* at *14.

28 ¹⁴⁹ *Id.* at *22.

29 ¹⁵⁰ *Id.* at *24–25.

30 ¹⁵¹ *Id.* at *26.

1 239. The positions taken by the trade groups is emblematic of the position
 2 taken by the Distributor Defendants in a futile attempt to deny their legal
 3 obligations to prevent diversion of the dangerous drugs.¹⁵²

4 240. The Court of Appeals for the District of Columbia recently issued its
 5 opinion affirming that a wholesale drug distributor does, in fact, have duties
 6 beyond reporting. *Masters Pharm., Inc. v. Drug Enf't Admin.*, 861 F.3d 206 (D.C.
 7 Cir. 2017). The D.C. Circuit Court upheld the revocation of Master
 8 Pharmaceutical's license and determined that DEA regulations require that in
 9 addition to reporting suspicious orders, distributors must "decline to ship the
 10 order, or conduct some 'due diligence' and—if it is able to determine that the
 11 order is not likely to be diverted into illegal channels—ship the order." *Id.* at 212.
 12 Master Pharmaceutical was in violation of legal requirements because it failed to
 13 conduct necessary investigations and filled suspicious orders. *Id.* at 218–19, 226.
 14 A distributor's investigation must dispel all the red flags giving rise to suspicious
 15 circumstances prior to shipping a suspicious order. *Id.* at 226. The Circuit Court
 16 also rejected the argument made by the HDMA and NACDS (quoted above), that,
 17 allegedly, the DEA had created or imposed new duties. *Id.* at 220.

18 241. Wholesale Distributor McKesson has recently been forced to
 19 specifically admit to breach of its duties to monitor, report, and prevent suspicious
 20 orders. Pursuant to an Administrative Memorandum of Agreement ("2017
 21 Agreement") entered into between McKesson and the DEA in January 2017,
 22 McKesson admitted that, at various times during the period from January 1, 2009
 23 through the effective date of the Agreement (January 17, 2017) it "did not identify
 24 or report to [the] DEA certain orders placed by certain pharmacies which should
 25 have been detected by McKesson as suspicious based on the guidance contained
 26

27 28¹⁵² See Brief of HDMA, 2012 WL 1637016, at *3 (arguing the wholesale
 distributor industry "does not know the rules of the road because" they claim
 (inaccurately) that the "DEA has not adequately explained them").

1 in the DEA Letters.”¹⁵³ Further, the 2017 Agreement specifically finds that
 2 McKesson “distributed controlled substances to pharmacies even though those
 3 McKesson Distribution Centers should have known that the pharmacists
 4 practicing within those pharmacies had failed to fulfill their corresponding
 5 responsibility to ensure that controlled substances were dispensed pursuant to
 6 prescriptions issued for legitimate medical purposes by practitioners acting in the
 7 usual course of their professional practice, as required by 21 C.F.R
 8 § 1306.04(a).”¹⁵⁴ McKesson admitted that, during this time period, it “failed to
 9 maintain effective controls against diversion of particular controlled substances
 10 into other than legitimate medical, scientific and industrial channels by sales to
 11 certain of its customers in violation of the CSA and the CSA’s implementing
 12 regulations, 21 C.F.R. Part 1300 *et seq.*, at the McKesson Distribution Centers.”¹⁵⁵
 13 Due to these violations, McKesson agreed that its authority to distribute controlled
 14 substances from numerous facilities would be partially suspended.¹⁵⁶

15 242. The 2017 Memorandum of Agreement followed a 2008 Settlement
 16 Agreement in which McKesson also admitted failure to report suspicious orders of
 17 controlled substances to the DEA.¹⁵⁷ In the 2008 Settlement Agreement,
 18 McKesson “recognized that it had a duty to monitor its sales of all controlled
 19 substances and report suspicious orders to DEA,” but had failed to do so.¹⁵⁸ The
 20 2017 Memorandum of Agreement documents that McKesson continued to breach
 21 its admitted duties by “fail[ing] to properly monitor its sales of controlled
 22

23
 24 ¹⁵³ See Administrative Memorandum of Agreement between the U.S. Dep’t of
 25 Justice, the Drug Enf’t Admin., and the McKesson Corp. (Jan. 17, 2017),
<https://www.justice.gov/opa/press-release/file/928476/download>.

26 ¹⁵⁴ *Id.* at 4.

27 ¹⁵⁵ *Id.*

28 ¹⁵⁶ *Id.* at 6.

¹⁵⁷ *Id.* at 4.

¹⁵⁸ *Id.*

1 substances and/or report suspicious orders to DEA, in accordance with
 2 McKesson's obligations.”¹⁵⁹ As a result of these violations, McKesson was fined
 3 and required to pay to the United States \$150,000,000.¹⁶⁰

4 243. Even though McKesson had been sanctioned in 2008 for failure to
 5 comply with its legal obligations regarding controlling diversion and reporting
 6 suspicious orders, and even though McKesson had specifically agreed in 2008 that
 7 it would no longer violate those obligations, McKesson continued to violate the
 8 laws in contrast to its written agreement not to do so.

9 244. Because of the Distributor Defendants' refusal to abide by their legal
 10 obligations, the DEA has repeatedly taken administrative action to attempt to
 11 force compliance. For example, in May 2014, the United States Department of
 12 Justice, Office of the Inspector General, Evaluation and Inspections Divisions,
 13 reported that the DEA issued final decisions in 178 registrant actions between
 14 2008 and 2012.¹⁶¹ The Office of Administrative Law Judges issued a
 15 recommended decision in a total of 117 registrant actions before the DEA issued
 16 its final decision, including 76 actions involving orders to show cause and 41
 17 actions involving immediate suspension orders.¹⁶² These actions include the
 18 following:

- 19 a. On April 24, 2007, the DEA issued an *Order to Show Cause and*
 20 *Immediate Suspension Order* against the AmerisourceBergen
 21 Orlando, Florida distribution center (“Orlando Facility”) alleging

22 ¹⁵⁹ *Id.*; see also Settlement Agreement and Release between the U.S. and
 23 McKesson Corp., at 5 (Jan. 17, 2017) [hereinafter 2017 Settlement Agreement and
 24 Release] (“McKesson acknowledges that, at various times during the Covered
 25 Time Period [2009-2017], it did not identify or report to DEA certain orders placed
 26 by certain pharmacies, which should have been detected by McKesson as
 27 suspicious, in a manner fully consistent with the requirements set forth in the 2008
 28 MOA.”), <https://www.justice.gov/opa/press-release/file/928471/download>.

160 See 2017 Settlement Agreement and Release, at 6.

161 Evaluation and Inspections Div., Office of the Inspector Gen., U.S. Dep’t of
 27 Justice, *The Drug Enforcement Administration’s Adjudication of Registrant*
 28 *Actions* 6 (2014), <https://oig.justice.gov/reports/2014/e1403.pdf>.

162 *Id.*

failure to maintain effective controls against diversion of controlled substances. On June 22, 2007, AmerisourceBergen entered into a settlement that resulted in the suspension of its DEA registration;

- b. On November 28, 2007, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the Cardinal Health Auburn, Washington Distribution Center (“Auburn Facility”) for failure to maintain effective controls against diversion of hydrocodone;
- c. On December 5, 2007, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the Cardinal Health Lakeland, Florida Distribution Center (“Lakeland Facility”) for failure to maintain effective controls against diversion of hydrocodone;
- d. On December 7, 2007, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the Cardinal Health Swedesboro, New Jersey Distribution Center (“Swedesboro Facility”) for failure to maintain effective controls against diversion of hydrocodone;
- e. On January 30, 2008, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the Cardinal Health Stafford, Texas Distribution Center (“Stafford Facility”) for failure to maintain effective controls against diversion of hydrocodone;
- f. On May 2, 2008, McKesson Corporation entered into an *Administrative Memorandum of Agreement* (“2008 MOA”) with the DEA which provided that McKesson would “maintain a compliance program designed to detect and prevent the diversion of controlled substances, inform DEA of suspicious orders required by 21 C.F.R. § 1301.74(b), and follow the procedures established by its Controlled Substance Monitoring Program”;
- g. On September 30, 2008, Cardinal Health entered into a *Settlement and Release Agreement and Administrative Memorandum of Agreement* with the DEA related to its Auburn Facility, Lakeland Facility, Swedesboro Facility and Stafford Facility. The document also referenced allegations by the DEA that Cardinal failed to maintain effective controls against the diversion of controlled substances at its distribution facilities located in McDonough, Georgia (“McDonough Facility”), Valencia, California (“Valencia Facility”) and Denver, Colorado (“Denver Facility”);
- h. On February 2, 2012, the DEA issued an *Order to Show Cause and Immediate Suspension Order* against the Cardinal Health Lakeland, Florida Distribution Center (“Lakeland Facility”) for failure to maintain effective controls against diversion of oxycodone;
- i. On December 23, 2016, Cardinal Health agreed to pay a \$44 million fine to the DEA to resolve the civil penalty portion of the administrative action taken against its Lakeland, Florida Distribution Center; and
- j. On January 5, 2017, McKesson Corporation entered into an *Administrative Memorandum Agreement* with the DEA wherein it agreed to pay a \$150 million civil penalty for violation of the 2008

1 MOA as well as failure to identify and report suspicious orders at its
 2 facilities in Aurora CO, Aurora IL, Delran NJ, LaCrosse WI,
 3 Lakeland FL, Landover MD, La Vista NE, Livonia MI, Methuen
 4 MA, Santa Fe Springs CA, Washington Courthouse OH and West
 5 Sacramento CA.

6 245. Rather than abide by their non-delegable duties under public safety
 7 laws, the Distributor Defendants, individually and collectively through trade
 8 groups in the industry, pressured the U.S. Department of Justice to “halt”
 9 prosecutions and lobbied Congress to strip the DEA of its ability to immediately
 10 suspend distributor registrations. The result was a “sharp drop in enforcement
 11 actions” and the passage of the “Ensuring Patient Access and Effective Drug
 12 Enforcement Act” which, ironically, raised the burden for the DEA to revoke a
 13 distributor’s license from “imminent harm” to “immediate harm” and provided the
 14 industry the right to “cure” any violations of law before a suspension order can be
 15 issued.¹⁶³

16 246. In addition to taking actions to limit regulatory prosecutions and
 17 suspensions, the Distributor Defendants undertook to fraudulently convince the
 18 public that they were complying with their legal obligations, including those
 19 imposed by licensing regulations. Through such statements, the Distributor
 20 Defendants attempted to assure the public they were working to curb the opioid
 21 epidemic.

22 247. For example, a Cardinal Health executive claimed that it uses
 23 “advanced analytics” to monitor its supply chain, and represented that it was being
 24

25 ¹⁶³ See Lenny Bernstein & Scott Higham, *Investigation: The DEA Slowed*
 26 *Enforcement While the Opioid Epidemic Grew Out of Control*, Wash. Post, Oct.
 27 22, 2016, https://www.washingtonpost.com/investigations/the-dea-slowed-enforcement-while-the-opioid-epidemic-grew-out-of-control/2016/10/22/aea2bf8e-7f71-11e6-8d13-d7c704ef9fd9_story.html; Lenny Bernstein & Scott Higham, *Investigation: U.S. Senator Calls for Investigation of DEA Enforcement Slowdown Amid Opioid Crisis*, Wash. Post, Mar. 6, 2017, https://www.washingtonpost.com/investigations/us-senator-calls-for-investigation-of-dea-enforcement-slowdown/2017/03/06/5846ee60-028b-11e7-b1e9-a05d3c21f7cf_story.html; Eric Eyre, *DEA Agent: “We Had No Leadership” in WV Amid Flood of Pain Pills*, Charleston Gazette-Mail, Feb. 18, 2017, <http://www.wvgazettemail.com/news/20170218/dea-agent-we-had-no-leadership-in-wv-amid-flood-of-pain-pills->.

1 “as effective and efficient as possible in constantly monitoring, identifying, and
 2 eliminating any outside criminal activity.”¹⁶⁴ Given the sales volumes and the
 3 company’s history of violations, this executive was either not telling the truth, or,
 4 if Cardinal Health had such a system, it ignored the results.

5 248. Similarly, Defendant McKesson publicly stated that it has a “best-in-
 6 class controlled substance monitoring program to help identify suspicious orders,”
 7 and claimed it is “deeply passionate about curbing the opioid epidemic in our
 8 country.”¹⁶⁵ Again, given McKesson’s historical conduct, this statement is either
 9 false, or the company ignored outputs of the monitoring program.

10 249. By misleading the public about the effectiveness of their controlled
 11 substance monitoring programs, the Distributor Defendants successfully
 12 concealed the facts sufficient to arouse suspicion of the claims that the Plaintiffs
 13 now assert. The Plaintiffs did not know of the existence or scope of Defendants’
 14 industry-wide fraud and could not have acquired such knowledge earlier through
 15 the exercise of reasonable diligence.

16 250. Meanwhile, the opioid epidemic rages unabated in the Nation, the
 17 State, and in Plaintiffs’ Community.

18 251. The epidemic still rages because the fines and suspensions imposed
 19 by the DEA do not change the conduct of the industry. The distributors, including
 20 the Distributor Defendants, pay fines as a cost of doing business in an industry
 21 that generates billions of dollars in annual revenue. They hold multiple DEA
 22
 23

24 ¹⁶⁴ Lenny Bernstein et al., *How Drugs Intended for Patients Ended Up in the*
 25 *Hands of Illegal Users: “No One Was Doing Their Job,”* Wash. Post, Oct. 22,
 26 2016, https://www.washingtonpost.com/investigations/how-drugs-intended-for-patients-ended-up-in-the-hands-of-illegal-users-no-one-was-doing-their-job/2016/10/22/10e79396-30a7-11e6-8ff7-7b6c1998b7a0_story.html.

27 ¹⁶⁵ Scott Higham et al., *Drug Industry Hired Dozens of Officials from the DEA as the Agency Tried to Curb Opioid Abuse,* Wash. Post, Dec. 22, 2016,
 28 https://www.washingtonpost.com/investigations/key-officials-switch-sides-from-dea-to-pharmaceutical-industry/2016/12/22/55d2e938-c07b-11e6-b527-949c5893595e_story.html.

registration numbers and when one facility is suspended, they simply ship from another facility.

252. The wrongful actions and omissions of the Distributor Defendants which have caused the diversion of opioids and which have been a substantial contributing factor to and/or proximate cause of the opioid crisis are alleged in greater detail in the racketeering allegations below.

253. The Distributor Defendants have abandoned their duties imposed under federal and state law, taken advantage of a lack of DEA law enforcement, and abused the privilege of distributing controlled substances in the State and Plaintiffs' Community.

4. The National Retail Pharmacies Were on Notice of and Contributed to Illegal Diversion of Prescription Opioids

254. National retail pharmacy chains earned enormous profits by flooding the country with prescription opioids.¹⁶⁶ They were keenly aware of the oversupply of prescription opioids through the extensive data and information they developed and maintained as both distributors and dispensaries. Yet, instead of taking any meaningful action to stem the flow of opioids into communities, they continued to participate in the oversupply and profit from it.

255. Each of the National Retail Pharmacies does substantial business throughout the United States. This business includes the distribution and dispensing of prescription opioids.

256. On information and belief, the National Retail Pharmacies distributed and dispensed substantial quantities of prescription opioids, including fentanyl, hydrocodone, and oxycodone in California. In addition, they distributed and dispensed substantial quantities of prescription opioids in other states, and these

¹⁶⁶ The allegations contained in this Complaint are based, in part, on discovery that is in its infancy. Plaintiffs do not have access to transactional ARCOS data for California. Accordingly, Plaintiffs reserve their right to further amend this complaint to add supporting allegations, claims and parties.

1 drugs were diverted from these other states to California. The National Retail
2 Pharmacies failed to take meaningful action to stop this diversion despite their
3 knowledge of it, and contributed substantially to the diversion problem.

4 257. The National Retail Pharmacies developed and maintained extensive
5 data on opioids they distributed and dispensed. Through this data, National Retail
6 Pharmacies had direct knowledge of patterns and instances of improper
7 distribution, prescribing, and use of prescription opioids in communities
8 throughout the country, and in California in particular. They used the data to
9 evaluate their own sales activities and workforce. On information and belief, the
10 National Retail Pharmacies also provided Defendants with data regarding, *inter*
11 *alia*, individual doctors in exchange for rebates or other forms of consideration.
12 The National Retail Pharmacies' data is a valuable resource that they could have
13 used to help stop diversion, but failed to do so.

14 **a. The National Retail Pharmacies Have a Duty to Prevent
15 Diversion**

16 258. Each participant in the supply chain of opioid distribution, including
17 the National Retail Pharmacies, is responsible for preventing diversion of
18 prescription opioids into the illegal market by, among other things, monitoring
19 and reporting suspicious activity.

20 259. The National Retail Pharmacies, like manufacturers and other
21 distributors, are registrants under the CSA. 21 C.F.R. § 1301.11. Under the CSA,
22 pharmacy registrants are required to “provide effective controls and procedures to
23 guard against theft and diversion of controlled substances.” See 21 C.F.R. §
24 1301.71(a). In addition, 21 C.F.R. § 1306.04(a) states, “[t]he responsibility for the
25 proper prescribing and dispensing of controlled substances is upon the prescribing
26 practitioner, but a corresponding responsibility rests with the pharmacist who fills
27 the prescription.” Because pharmacies themselves are registrants under the CSA,
28

1 the duty to prevent diversion lies with the pharmacy entity, not the individual
2 pharmacist alone.

3 260. The DEA, among others, has provided extensive guidance to
4 pharmacies concerning their duties to the public. The guidance advises
5 pharmacies how to identify suspicious orders and other evidence of diversion.

6 261. Suspicious pharmacy orders include orders of unusually large size,
7 orders that are disproportionately large in comparison to the population of a
8 community served by the pharmacy, orders that deviate from a normal pattern
9 and/or orders of unusual frequency and duration, among others.

10 262. Additional types of suspicious orders include: (1) prescriptions
11 written by a doctor who writes significantly more prescriptions (or in larger
12 quantities or higher doses) for controlled substances compared to other
13 practitioners in the area; (2) prescriptions which should last for a month in
14 legitimate use, but are being refilled on a shorter basis; (3) prescriptions for
15 antagonistic drugs, such as depressants and stimulants, at the same time; (4)
16 prescriptions that look “too good” or where the prescriber’s handwriting is too
17 legible; (5) prescriptions with quantities or doses that differ from usual medical
18 usage; (6) prescriptions that do not comply with standard abbreviations and/or
19 contain no abbreviations; (7) photocopied prescriptions; or (8) prescriptions
20 containing different handwriting. Most of the time, these attributes are not
21 difficult to detect and should be easily recognizable by pharmacies.

22 263. Suspicious pharmacy orders are red flags for if not direct evidence of
23 diversion.

24 264. Other signs of diversion can be observed through data gathered,
25 consolidated, and analyzed by the National Retail Pharmacies themselves. That
26 data allows them to observe patterns or instances of dispensing that are potentially
27 suspicious, of oversupply in particular stores or geographic areas, or of prescribers
28 or facilities that seem to engage in improper prescribing.

1 265. According to industry standards, if a pharmacy finds evidence of
2 prescription diversion, the local Board of Pharmacy and DEA must be contacted.

3 266. Despite their legal obligations as registrants under the CSA, the
4 National Retail Pharmacies allowed widespread diversion to occur—and they did
5 so knowingly.

6 267. Performance metrics and prescription quotas adopted by the National
7 Retail Pharmacies for their retail stores contributed to their failure. Under CVS's
8 Metrics System, for example, pharmacists are directed to meet high goals that
9 make it difficult, if not impossible, to comply with applicable laws and
10 regulations. There is no measurement for pharmacy accuracy or customer safety.
11 Moreover, the bonuses for pharmacists are calculated, in part, on how many
12 prescriptions that pharmacist fills within a year. The result is both deeply
13 troubling and entirely predictable: opioids flowed out of National Retail
14 Pharmacies and into communities throughout the country. The policies remained
15 in place even as the epidemic raged.

16 268. Upon information and belief, this problem was compounded by the
17 Pharmacies' failure to adequately train their pharmacists and pharmacy
18 technicians on how to properly and adequately handle prescriptions for opioid
19 painkillers, including what constitutes a proper inquiry into whether a prescription
20 is legitimate, whether a prescription is likely for a condition for which the FDA
21 has approved treatments with opioids, and what measures and/or actions to take
22 when a prescription is identified as phony, false, forged, or otherwise illegal, or
23 when suspicious circumstances are present, including when prescriptions are
24 procured and pills supplied for the purpose of illegal diversion and drug
25 trafficking.

26 269. Upon information and belief, the National Retail Pharmacies also
27 failed to adequately use data available to them to identify doctors who were
28 writing suspicious numbers of prescriptions and/or prescriptions of suspicious

1 amounts of opioids, or to adequately use data available to them to do statistical
2 analysis to prevent the filling of prescriptions that were illegally diverted or
3 otherwise contributed to the opioid crisis.

4 270. Upon information and belief, the National Retail Pharmacies failed to
5 analyze: (a) the number of opioid prescriptions filled by individual pharmacies
6 relative to the population of the pharmacy's community; (b) the increase in opioid
7 sales relative to past years; (c) the number of opioid prescriptions filled relative to
8 other drugs; and (d) the increase in annual opioid sales relative to the increase in
9 annual sales of other drugs.

10 271. Upon information and belief, the National Retail Pharmacies also
11 failed to conduct adequate internal or external audits of their opioid sales to
12 identify patterns regarding prescriptions that should not have been filled and to
13 create policies accordingly, or if they conducted such audits, they failed to take
14 any meaningful action as a result.

15 272. Upon information and belief, the National Retail Pharmacies also
16 failed to effectively respond to concerns raised by their own employees regarding
17 inadequate policies and procedures regarding the filling of opioid prescriptions.

18 273. The National Retail Pharmacies were, or should have been, fully
19 aware that the quantity of opioids being distributed and dispensed by them was
20 untenable, and in many areas patently absurd; yet, they did not take meaningful
21 action to investigate or to ensure that they were complying with their duties and
22 obligations under the law with regard to controlled substances.

23 **b. Multiple Enforcement Actions against the National Retail
24 Pharmacies Confirm their Compliance Failures.**

25 274. The National Retail Pharmacies have long been on notice of their
26 failure to abide by state and federal law and regulations governing the distribution
27 and dispensing of prescription opioids. Indeed, several of the National Retail
28 Pharmacies have been repeatedly penalized for their illegal prescription opioid

1 practices. Upon information and belief, based upon the widespread nature of these
2 violations, these enforcement actions are the product of, and confirm, national
3 policies and practices of the National Retail Pharmacies.

4 **i. CVS**

5 275. CVS is one of the largest companies in the world, with annual
6 revenue of more than \$150 billion. According to news reports, it manages
7 medications for nearly 90 million customers at 9,700 retail locations. CVS could
8 be a force for good in connection with the opioid crisis, but like other Defendants,
9 CVS sought profits over people.

10 276. CVS is a repeat offender and recidivist: the company has paid fines
11 totaling over \$40 million as the result of a series of investigations by the DEA and
12 the United States Department of Justice (“DOJ”). It nonetheless treated these fines
13 as the cost of doing business and has allowed its pharmacies to continue
14 dispensing opioids in quantities significantly higher than any plausible medical
15 need would require, and to continue violating its recordkeeping and dispensing
16 obligations under the CSA.

17 277. As recently as July 2017, CVS entered into a \$5 million settlement
18 with the U.S. Attorney’s Office for the Eastern District of California regarding
19 allegations that its pharmacies failed to keep and maintain accurate records of
20 Schedule II, III, IV, and V controlled substances.¹⁶⁷

21 278. This fine was preceded by numerous others throughout the country.

22 279. In February 2016, CVS paid \$8 million to settle allegations made by
23 the DEA and the DOJ that from 2008-2012, CVS stores and pharmacists in
24
25
26

27 ¹⁶⁷ Press Release, U.S. Attorney’s Office E. Dist. of Cal., *CVS Pharmacy Inc. Pays*
28 *\$5M to Settle Alleged Violations of the Controlled Substance Act*, U.S. Dep’t of
Just. (July 11, 2017), <https://www.justice.gov/usao-edca/pr/cvs-pharmacy-inc-pays-5m-settle-alleged-violations-controlled-substance-act>.

1 Maryland violated their duties under the CSA and filled prescriptions with no
 2 legitimate medical purpose.¹⁶⁸

3 280. In October 2016, CVS paid \$600,000 to settle allegations by the DOJ
 4 that stores in Connecticut failed to maintain proper records in accordance with the
 5 CSA.¹⁶⁹

6 281. In September 2016, CVS entered into a \$795,000 settlement with the
 7 Massachusetts Attorney General wherein CVS agreed to require pharmacy staff to
 8 access the state's prescription monitoring program website and review a patient's
 9 prescription history before dispensing certain opioid drugs.¹⁷⁰

10 282. In June 2016, CVS agreed to pay the DOJ \$3.5 million to resolve
 11 allegations that 50 of its stores violated the CSA by filling forged prescriptions for
 12 controlled substances—mostly addictive painkillers—more than 500 times
 13 between 2011 and 2014.¹⁷¹

14 283. In August 2015, CVS entered into a \$450,000 settlement with the
 15 U.S. Attorney's Office for the District of Rhode Island to resolve allegations that
 16 several of its Rhode Island stores violated the CSA by filling invalid prescriptions
 17 and maintaining deficient records. The United States alleged that CVS retail

19
 20 ¹⁶⁸ Press Release, U.S. Attorney's Office Dist. of Md., *United States Reaches \$8*
 21 *Million Settlement Agreement with CVS for Unlawful Distribution of Controlled*
 22 *Substances*, U.S. Dep't of Just. (Feb. 12, 2016), <https://www.justice.gov/usao-md/pr/united-states-reaches-8-million-settlement-agreement-cvs-unlawful-distribution-controlled>.

23 ¹⁶⁹ Press Release, U.S. Attorney's Office Dist. of Conn., *CVS Pharmacy Pays*
 24 *\$600,000 to Settle Controlled Substances Act Allegations*, U.S. Dep't of Just. (Oct.
 25 20, 2016), <https://www.justice.gov/usao-ct/pr/cvs-pharmacy-pays-600000-settle-controlled-substances-act-allegations>.

26 ¹⁷⁰ Dialynn Dwyer, *CVS will pay \$795,000, strengthen policies around dispensing*
 27 *opioids in agreement with state*, Boston.com (Sept. 1, 2016),
 28 <https://www.boston.com/news/local-news/2016/09/01/cvs-will-pay-795000-strengthen-policies-around-dispensing-opioids-in-agreement-with-state>.

29 ¹⁷¹ Press Release, U.S. Attorney's Office Dist. of Mass., *CVS to Pay \$3.5 Million*
 30 *to Resolve Allegations that Pharmacists Filled Fake Prescriptions*, U.S. Dep't of
 31 Just. (June 30, 2016), <https://www.justice.gov/usao-ma/pr/cvs-pay-35-million-resolve-allegations-pharmacists-filled-fake-prescriptions>.

1 pharmacies in Rhode Island filled a number of forged prescriptions with invalid
 2 DEA numbers, and filled multiple prescriptions written by psychiatric nurse
 3 practitioners for hydrocodone, despite the fact that these practitioners were not
 4 legally permitted to prescribe that drug. Additionally, the government alleged that
 5 CVS had recordkeeping deficiencies.¹⁷²

6 284. In May 2015, CVS agreed to pay a \$22 million penalty following a
 7 DEA investigation that found that employees at two pharmacies in Sanford,
 8 Florida, had dispensed prescription opioids, “based on prescriptions that had not
 9 been issued for legitimate medical purposes by a health care provider acting in the
 10 usual course of professional practice. CVS also acknowledged that its retail
 11 pharmacies had a responsibility to dispense only those prescriptions that were
 12 issued based on legitimate medical need.”¹⁷³

13 285. In September 2014, CVS agreed to pay \$1.9 million in civil penalties
 14 to resolve allegations it filled prescriptions written by a doctor whose controlled-
 15 substance registration had expired.¹⁷⁴

16 286. In August 2013, CVS was fined \$350,000 by the Oklahoma
 17 Pharmacy Board for improperly selling prescription narcotics in at least five
 18 locations in the Oklahoma City metropolitan area.¹⁷⁵

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 21 172 Press Release, U.S. Attorney’s Office Dist. of R.I., Drug Diversion Claims
 22 Against CVS Health Corp. Resolved With \$450,000 Civil Settlement, U.S. Dep’t
 23 of Just. (Aug. 10, 2015), <https://www.justice.gov/usao-ri/pr/drug-diversion-claims-against-cvs-health-corp-resolved-450000-civil-settlement>.

24 173 Press Release, U.S. Attorney’s Office M. Dist. of Fla., United States Reaches
 25 \$22 Million Settlement Agreement With CVS For Unlawful Distribution of
 Controlled Substances, U.S. Dep’t of Just. (May 13, 2015),
<https://www.justice.gov/usao-mdfl/pr/united-states-reaches-22-million-settlement-agreement-cvs-unlawful-distribution>.

26 174 Patrick Danner, *H-E-B, CVS Fined Over Prescriptions*, San Antonio Express-
 27 News (Sept. 5, 2014), <http://www.expressnews.com/business/local/article/H-E-B-CVS-fined-over-prescriptions-5736554.php>.

28 175 Andrew Knittle, *Oklahoma pharmacy board stays busy, hands out massive fines at times*, NewsOK (May 3, 2015), <http://newsok.com/article/5415840>.

1 287. Dating back to 2006, CVS retail pharmacies in Oklahoma and
 2 elsewhere intentionally violated the CSA by filling prescriptions signed by
 3 prescribers with invalid DEA registration numbers.¹⁷⁶

4 **ii. Walgreens**

5 288. Walgreens is the second-largest pharmacy store chain in the United
 6 States behind CVS, with annual revenue of more than \$118 billion. According to
 7 its website, Walgreens operates more than 8,100 retail locations and filled 990
 8 million prescriptions on a 30-day adjusted basis in fiscal 2017.

9 289. Walgreens also has been penalized for serious and flagrant violations
 10 of the CSA. Indeed, Walgreens agreed to the largest settlement in DEA history—
 11 \$80 million—to resolve allegations that it committed an unprecedented number of
 12 recordkeeping and dispensing violations of the CSA, including negligently
 13 allowing controlled substances such as oxycodone and other prescription
 14 painkillers to be diverted for abuse and illegal black market sales.¹⁷⁷

15 290. The settlement resolved investigations into and allegations of CSA
 16 violations in Florida, New York, Michigan, and Colorado that resulted in the
 17 diversion of millions of opioids into illicit channels.

18 291. Walgreens' Florida operations at issue in this settlement highlight its
 19 egregious conduct regarding diversion of prescription opioids. Walgreens' Florida
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24 ¹⁷⁶ Press Release, U.S. Attorney's Office W. Dist. of Okla., CVS to Pay \$11
 25 Million To Settle Civil Penalty Claims Involving Violations of Controlled
 26 Substances Act, U.S. Dep't of Just. (Apr. 3, 2013), <https://www.justice.gov/usao-wdok/pr/cvs-pay-11-million-settle-civil-penalty-claims-involving-violations-controlled>.

27 ¹⁷⁷ Press Release, U.S. Attorney's Office S. Dist. of Fla., *Walgreens Agrees To Pay*
 28 *A Record Settlement Of \$80 Million For Civil Penalties Under The Controlled*
 29 *Substances Act*, U.S. Dep't of Just. (June 11, 2013), <https://www.justice.gov/usao-sdfl/pr/walgreens-agrees-pay-record-settlement-80-million-civil-penalties-under-controlled>.

1 pharmacies each allegedly ordered more than one million dosage units of
 2 oxycodone in 2011—more than ten times the average amount.¹⁷⁸

3 292. They increased their orders over time, in some cases as much as
 4 600% in the space of just two years, including, for example, supplying a town of
 5 3,000 with 285,800 orders of oxycodone in a one-month period. Yet Walgreens
 6 corporate officers turned a blind eye to these abuses. In fact, corporate attorneys
 7 at Walgreens suggested, in reviewing the legitimacy of prescriptions coming from
 8 pain clinics, that “if these are legitimate indicators of inappropriate prescriptions
 9 perhaps we should consider not documenting our own potential noncompliance,”
 10 underscoring Walgreens’ attitude that profit outweighed compliance with the CSA
 11 or the health of communities.¹⁷⁹

12 293. Defendant Walgreens’ settlement with the DEA stemmed from the
 13 DEA’s investigation into Walgreens’ distribution center in Jupiter, Florida, which
 14 was responsible for significant opioid diversion in Florida. According to the Order
 15 to Show Cause, Defendant Walgreens’ corporate headquarters pushed to increase
 16 the number of oxycodone sales to Walgreens’ Florida pharmacies, and provided
 17 bonuses for pharmacy employees based on number of prescriptions filled at the
 18 pharmacy in an effort to increase oxycodone sales. In July 2010, Defendant
 19 Walgreens ranked all of its Florida stores by number of oxycodone prescriptions
 20 dispensed in June of that year, and found that the highest-ranking store in
 21 oxycodone sales sold almost 18 oxycodone prescriptions per day. All of these
 22 prescriptions were filled by the Jupiter Center.¹⁸⁰

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¹⁷⁸ Order to Show Cause and Immediate Suspension of Registration, *In the Matter*
 27 *of Walgreens Co.* (Drug Enf’t Admin. Sept. 13, 2012).

28 ¹⁷⁹ *Id.*

180 *Id.*

294. Walgreens has also settled with a number of state attorneys general, including West Virginia (\$575,000) and Massachusetts (\$200,000).¹⁸¹

295. The Massachusetts Attorney General's Medicaid Fraud Division found that, from 2010 through most of 2015, multiple Walgreens stores across the state failed to monitor the opioid use of some Medicaid patients who were considered high-risk.

296. In January 2017, an investigation by the Massachusetts Attorney General found that some Walgreens pharmacies failed to monitor patients' drug use patterns and didn't use sound professional judgment when dispensing opioids and other controlled substances—despite the context of soaring overdose deaths in Massachusetts. Walgreens agreed to pay \$200,000 and follow certain procedures for dispensing opioids.¹⁸²

iii. Rite Aid

297. With approximately 4,600 stores in 31 states and the District of Columbia, Rite Aid is the largest drugstore chain on the East Coast and the third-largest in the United States, with annual revenue of more than \$21 billion.

298. In 2009, as a result of a multi-jurisdictional investigation by the DOJ, Rite Aid and nine of its subsidiaries in eight states were fined \$5 million in civil penalties for its violations of the CSA.¹⁸³

299. The investigation revealed that from 2004 onwards, Rite Aid pharmacies across the country had a pattern of non-compliance with the requirements of the CSA and federal regulations that led to the diversion of

¹⁸¹ Walgreens to pay \$200,000 settlement for lapses with opioids, APhA (Jan. 25, 2017), <https://www.pharmacist.com/article/walgreens-pay-200000-settlement-lapses-opioids>.

182 *Id.*

¹⁸³ Press Release, Dep’t of Just., *Rite Aid Corporation and Subsidiaries Agree to Pay \$5 Million in Civil Penalties to Resolve Violations in Eight States of the Controlled Substances Act*, U.S. Dep’t of Just. (Jan. 12, 2009), <https://www.justice.gov/opa/pr/rite-aid-corporation-and-subsidiaries-agree-pay-5-million-civil-penalties-resolve-violations>.

1 prescription opioids in and around the communities of the Rite Aid pharmacies
2 investigated. Rite Aid also failed to notify the DEA of losses of controlled
3 substances in violation of 21 USC 842(a)(5) and 21 C.F.R 1301.76(b).¹⁸⁴

4 300. Numerous state and federal drug diversion prosecutions have
5 occurred in which prescription opioid pills were procured from National Retail
6 Pharmacies. The allegations in this Complaint do not attempt to identify all these
7 prosecutions, and the information above is merely by way of example.

8 301. The litany of state and federal actions against the National Retail
9 Pharmacies demonstrate that they routinely, and as a matter of standard operating
10 procedure, violated their legal obligations under the CSA and other laws and
11 regulations that govern the distribution and dispensing of prescription opioids.

12 302. Throughout the country and the State, the National Retail Pharmacies
13 were or should have been aware of numerous red flags of potential suspicious
14 activity and diversion.

15 303. On information and belief, from the catbird seat of their retail
16 pharmacy operations, the National Retail Pharmacies knew or reasonably should
17 have known about the disproportionate flow of opioids into California and the
18 operation of “pill mills” that generated opioid prescriptions that, by their quantity
19 or nature, were red flags for if not direct evidence of illicit supply and diversion.
20 Additional information was provided by news reports, and state and federal
21 regulatory actions, including prosecutions of pill mills in the area.

22 304. On information and belief, the National Retail Pharmacies knew or
23 reasonably should have known about the devastating consequences of the
24 oversupply and diversion of prescription opioids, including spiking opioid
25 overdose rates in the community.

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¹⁸⁴ *Id.*

1 305. On information and belief, because of (among others sources of
2 information) regulatory and other actions taken against the National Retail
3 Pharmacies directly, actions taken against others pertaining to prescription opioids
4 obtained from their retail stores, complaints and information from employees and
5 other agents, and the massive volume of opioid prescription drug sale data that
6 they developed and monitored, the National Retail Pharmacies were well aware
7 that their distribution and dispensing activities fell far short of legal requirements.

8 306. The National Retail Pharmacies' actions and omission in failing to
9 effectively prevent diversion and failing to monitor, report, and prevent suspicious
10 orders have contributed significantly to the opioid crisis by enabling, and failing
11 to prevent, the diversion of opioids.

12 **D. THE MANUFACTURER DEFENDANTS' UNLAWFUL FAILURE**
13 **TO PREVENT DIVERSION AND MONITOR, REPORT, AND**
14 **PREVENT SUSPICIOUS ORDERS.**

15 307. The same legal duties to prevent diversion, and to monitor, report,
16 and prevent suspicious orders of prescription opioids that were incumbent upon
17 the Distributor Defendants were also legally required of the Manufacturer
18 Defendants under federal law.

19 308. Under federal law, the Manufacturing Defendants were required to
20 comply with the same licensing requirements and with the same rules regarding
21 prevention of diversion and reporting suspicious orders, as set out above.

22 309. Like the Distributor Defendants, the Manufacturer Defendants were
23 required to register with the DEA to manufacture schedule II controlled
24 substances, like prescription opioids. *See* 21 U.S.C. § 823(a). A requirement of
25 such registration is the:

26 maintenance of effective controls against diversion of particular
27 controlled substances and any controlled substance in schedule I or II
28 compounded therefrom into other than legitimate medical, scientific,
research, or industrial channels, by limiting the importation and bulk
manufacture of such controlled substances to a number of
establishments which can produce an adequate and uninterrupted

1 supply of these substances under adequately competitive conditions
2 for legitimate medical, scientific, research, and industrial purposes . . .
3 .

21 U.S.C. § 823(a)(1) (emphasis added).

310. Additionally, as “registrants” under Section 823, the Manufacturer
4 Defendants were also required to monitor, report, and prevent suspicious orders of
5 controlled substances:

7 The registrant shall design and operate a system to disclose to the
8 registrant suspicious orders of controlled substances. The registrant
9 shall inform the Field Division Office of the Administration in his
area of suspicious orders when discovered by the registrant.
Suspicious orders include orders of unusual size, orders deviating
substantially from a normal pattern, and orders of unusual frequency.

10 21 C.F.R. § 1301.74. *See also* 21 C.F.R. § 1301.02 (“Any term used in this part
11 shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part
12 1300 of this chapter.”); 21 C.F.R. § 1300.01 (“Registrant means any person who is
13 registered pursuant to either section 303 or section 1008 of the Act (21 U.S.C. 823
14 or 958).” Like the Distributor Defendants, the Manufacture Defendants breached
15 these duties.

16 311. The Manufacturer Defendants had access to and possession of the
17 information necessary to monitor, report, and prevent suspicious orders and to
18 prevent diversion. The Manufacturer Defendants engaged in the practice of
19 paying “chargebacks” to opioid distributors. A chargeback is a payment made by
20 a manufacturer to a distributor after the distributor sells the manufacturer’s
21 product at a price below a specified rate. After a distributor sells a manufacturer’s
22 product to a pharmacy, for example, the distributor requests a chargeback from the
23 manufacturer and, in exchange for the payment, the distributor identifies to the
24 manufacturer the product, volume and the pharmacy to which it sold the product.
Thus, the Manufacturer Defendants knew – just as the Distributor Defendants
25 knew – the volume, frequency, and pattern of opioid orders being placed and
26 filled. The Manufacturer Defendants built receipt of this information into the
27 payment structure for the opioids provided to the opioid distributors.

1 312. Federal statutes and regulations are clear: just like opioid
 2 distributors, opioid manufacturers are required to “design and operate a system to
 3 disclose . . . suspicious orders of controlled substances” and to maintain “effective
 4 controls against diversion.” 21 C.F.R. § 1301.74; 21 U.S.C. § 823(a)(1).

5 313. The Department of Justice has recently confirmed the suspicious
 6 order obligations clearly imposed by federal law upon opioid manufacturers,
 7 fining Mallinckrodt \$35 million for failure to report suspicious orders of
 8 controlled substances, including opioids, and for violating recordkeeping
 9 requirements.¹⁸⁵

10 314. In the press release accompanying the settlement, the Department of
 11 Justice stated: Mallinckrodt “did not meet its obligations to detect and notify DEA
 12 of suspicious orders of controlled substances such as oxycodone, the abuse of
 13 which is part of the current opioid epidemic. These suspicious order monitoring
 14 requirements exist to prevent excessive sales of controlled substances, like
 15 oxycodone Mallinckrodt’s actions and omissions formed a link in the chain
 16 of supply that resulted in millions of oxycodone pills being sold on the street. . . .
 17 ‘Manufacturers and distributors have a crucial responsibility to ensure that
 18 controlled substances do not get into the wrong hands. . . .’”¹⁸⁶

19 315. Among the allegations resolved by the settlement, the government
 20 alleged “Mallinckrodt failed to design and implement an effective system to detect
 21 and report ‘suspicious orders’ for controlled substances – orders that are unusual
 22 in their frequency, size, or other patterns . . . [and] Mallinckrodt supplied
 23 distributors, and the distributors then supplied various U.S. pharmacies and pain
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 26 ¹⁸⁵ See Press Release, U.S. Dep’t of Justice, Mallinckrodt Agrees to Pay Record
 27 \$35 Million Settlement for Failure to Report Suspicious Orders of Pharmaceutical
 28 Drugs and for Recordkeeping Violations (July 11, 2017),
<https://www.justice.gov/opa/pr/mallinckrodt-agrees-pay-record-35-million-settlement-failure-report-suspicious-orders>.

29 ¹⁸⁶ *Id.* (quoting DEA Acting Administrator Chuck Rosenberg).

1 clinics, an increasingly excessive quantity of oxycodone pills without notifying
2 DEA of these suspicious orders.”¹⁸⁷

3 316. The Memorandum of Agreement entered into by Mallinckrodt
4 (“2017 Mallinckrodt MOA”) avers “[a]s a registrant under the CSA, Mallinckrodt
5 had a responsibility to maintain effective controls against diversion, including a
6 requirement that it review and monitor these sales and report suspicious orders to
7 DEA.”¹⁸⁸

8 317. The 2017 Mallinckrodt MOA further details the DEA’s allegations
9 regarding Mallinckrodt’s failures to fulfill its legal duties as an opioid
10 manufacturer:

11 With respect to its distribution of oxycodone and hydrocodone
12 products, Mallinckrodt’s alleged failure to distribute these controlled
13 substances in a manner authorized by its registration and
14 Mallinckrodt’s alleged failure to operate an effective suspicious order
monitoring system and to report suspicious orders to the DEA when
discovered as required by and in violation of 21 C.F.R. § 1301.74(b).
The above includes, but is not limited to Mallinckrodt’s alleged failure
to:

- 15 i. conduct adequate due diligence of its customers;
- 16 ii. detect and report to the DEA orders of unusual size and
frequency;
- 17 iii. detect and report to the DEA orders deviating substantially
from normal patterns including, but not limited to, those
identified in letters from the DEA Deputy Assistant
Administrator, Office of Diversion Control, to registrants dated
September 27, 2006 and December 27, 2007:
 - 18 1. orders that resulted in a disproportionate amount of a
substance which is most often abused going to a
particular geographic region where there was known
diversion,

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¹⁸⁷ *Id.*

188 Administrative Memorandum of Agreement between the United States
Department of Justice, the Drug Enforcement Agency, and Mallinckrodt, plc. and
its subsidiary Mallinckrodt, LLC (July 10, 2017), <https://www.justice.gov/usao-edmi/press-release/file/986026/download> (“2017 Mallinckrodt MOA”).

- 1 2. orders that purchased a disproportionate amount of a
- 2 substance which is most often abused compared to other
- 3 products, and
- 4 3. orders from downstream customers to distributors who
- 5 were purchasing from multiple different distributors, of
- 6 which Mallinckrodt was aware;
- 7 iv. use "chargeback" information from its distributors to evaluate
- 8 suspicious orders. Chargebacks include downstream
- 9 purchasing information tied to certain discounts, providing
- 10 Mallinckrodt with data on buying patterns for Mallinckrodt
- 11 products; and
- 12 v. take sufficient action to prevent recurrence of diversion by
- 13 downstream customers after receiving concrete information of
- 14 diversion of Mallinckrodt product by those downstream
- 15 customers.¹⁸⁹

16 318. Mallinckrodt agreed that its "system to monitor and detect suspicious
 17 orders did not meet the standards outlined in letters from the DEA Deputy
 18 Administrator, Office of Diversion Control, to registrants dated September 27,
 19 2006 and December 27, 2007." Mallinckrodt further agreed that it "recognizes the
 20 importance of the prevention of diversion of the controlled substances they
 21 manufacture" and would "design and operate a system that meets the requirements
 22 of 21 CFR 1301.74(b) . . . [such that it would] utilize all available transaction
 23 information to identify suspicious orders of any Mallinckrodt product. Further,
 24 Mallinckrodt agrees to notify DEA of any diversion and/or suspicious
 25 circumstances involving any Mallinckrodt controlled substances that Mallinckrodt
 26 discovers."¹⁹⁰

27 319. Mallinckrodt acknowledged that "[a]s part of their business model
 28 Mallinckrodt collects transaction information, referred to as chargeback data, from
 29 their direct customers (distributors). The transaction information contains data
 30 relating to the direct customer sales of controlled substances to 'downstream'

28 ¹⁸⁹ 2017 Mallinckrodt MOA at 2-3.

¹⁹⁰ *Id.* at 3-4.

1 registrants.” Mallinckrodt agreed that, from this data, it would “report to the DEA
2 when Mallinckrodt concludes that the chargeback data or other information
3 indicates that a downstream registrant poses a risk of diversion.”¹⁹¹

4 320. The same duties imposed by federal law on Mallinckrodt were
5 imposed upon all Manufacturer Defendants.

6 321. The same business practices utilized by Mallinckrodt regarding
7 “charge backs” and receipt and review of data from opioid distributors regarding
8 orders of opioids were utilized industry-wide among opioid manufacturers and
9 distributors, including, upon information and belief, the other Manufacturer
10 Defendants.

11 322. Through, *inter alia*, the charge back data, the Manufacturer
12 Defendants could monitor suspicious orders of opioids.

13 323. The Manufacturer Defendants failed to monitor, report, and halt
14 suspicious orders of opioids as required by federal and state law.

15 324. The Manufacturer Defendants’ failures to monitor, report, and halt
16 suspicious orders of opioids were intentional and unlawful.

17 325. The Manufacturer Defendants have misrepresented their compliance
18 with federal and state law.

19 326. The Manufacturer Defendants enabled the supply of prescription
20 opioids to obviously suspicious physicians and pharmacies, enabled the illegal
21 diversion of opioids, aided criminal activity, and disseminated massive quantities
22 of prescription opioids into the black market.

23 327. The wrongful actions and omissions of the Manufacturer Defendants
24 which have caused the diversion of opioids and which have been a substantial
25 contributing factor to and/or proximate cause of the opioid crisis are alleged in
26 greater detail in the racketeering allegations below.

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¹⁹¹ *Id.* at 5.

1 328. The Manufacturer Defendants' actions and omissions in failing to
 2 effectively prevent diversion and failing to monitor, report, and prevent suspicious
 3 orders have enabled the unlawful diversion of opioids into Plaintiffs' Community.

4 **E. DEFENDANTS' UNLAWFUL CONDUCT AND BREACHES OF**
 5 **LEGAL DUTIES CAUSED THE HARM ALLEGED HEREIN AND**
 6 **SUBSTANTIAL DAMAGES.**

7 329. As the Manufacturer Defendants' efforts to expand the market for
 8 opioids increased so have the rates of prescription and sale of their products —
 9 and the rates of opioid-related substance abuse, hospitalization, and death among
 10 the people of the State and the Plaintiffs' Community. The Distributor Defendants
 11 have continued to unlawfully ship these massive quantities of opioids into
 12 communities like the Plaintiffs' Community, fueling the epidemic.

13 330. There is a "parallel relationship between the availability of
 14 prescription opioid analgesics through legitimate pharmacy channels and the
 15 diversion and abuse of these drugs and associated adverse outcomes."¹⁹²

16 331. Opioid analgesics are widely diverted and improperly used, and the
 17 widespread use of the drugs has resulted in a national epidemic of opioid overdose
 18 deaths and addictions.¹⁹³

19 332. The epidemic is "directly related to the increasingly widespread
 20 misuse of powerful opioid pain medications."¹⁹⁴

21 333. The increased abuse of prescription painkillers along with growing
 22 sales has contributed to a large number of overdoses and deaths.¹⁹⁵

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 24 ¹⁹² See Richard C. Dart et al., Trends in Opioid Analgesic Abuse and Mortality in
 25 the United States, 372 N. Eng. J. Med. 241 (2015).

26 ¹⁹³ See Nora D. Volkow & A. Thomas McLellan, *Opioid Abuse in Chronic Pain—*
 Misconceptions and Mitigation Strategies, 374 N. Eng. J. Med. 1253 (2016).

27 ¹⁹⁴ See Robert M. Califf et al., *A Proactive Response to Prescription Opioid Abuse*,
 374 N. Eng. J. Med. 1480 (2016).

28 ¹⁹⁵ See Press Release, Ctrs. for Disease Control and Prevention, U.S. Dep't of
 Health and Human Servs., Prescription Painkiller Overdoses at Epidemic Levels

1 334. As shown above, the opioid epidemic has escalated in Plaintiffs'
2 Community with devastating effects. Substantial opiate-related substance abuse,
3 hospitalization and death mirrors Defendants' increased distribution of opiates.

4 335. Because of the well-established relationship between the use of
5 prescription opiates and the use of non-prescription opioids, like heroin, the
6 massive distribution of opioids to Plaintiffs' Community and areas from which
7 such opioids are being diverted into Plaintiffs' Community, has caused the
8 Defendant-caused opioid epidemic to include heroin addiction, abuse, and death.

9 336. Prescription opioid abuse, addiction, morbidity, and mortality are
10 hazards to public health and safety in the State and in Plaintiffs' Community.

11 337. Heroin abuse, addiction, morbidity, and mortality are hazards to
12 public health and safety in the State and in Plaintiffs' Community.

13 338. Defendants repeatedly and purposefully breached their duties under
14 state and federal law, and such breaches are direct and proximate causes of, and/or
15 substantial factors leading to, the widespread diversion of prescription opioids for
16 nonmedical purposes into the Plaintiffs' Community.

17 339. The unlawful diversion of prescription opioids is a direct and
18 proximate cause of, and/or substantial factor leading to, the opioid epidemic,
19 prescription opioid abuse, addiction, morbidity and mortality in the State and
20 Plaintiffs' Community. This diversion and the epidemic are direct causes of
21 foreseeable harms incurred by the Plaintiffs and Plaintiffs' Community.

22 340. Defendants' intentional and/or unlawful conduct resulted in direct
23 and foreseeable, past and continuing, economic damages for which Plaintiffs seek
24 relief, as alleged herein. Plaintiffs also seek the means to abate the epidemic
25 created by Defendants' wrongful and/or unlawful conduct.

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28 (Nov. 1, 2011),
https://www.cdc.gov/media/releases/2011/p1101_flu_pain_killer_overdose.html.

1 341. The County seeks economic damages from the Defendants as
2 reimbursement for the costs associated with damage to its property and past
3 efforts to eliminate the hazards to public health and safety.

4 342. Plaintiffs seek economic damages from the Defendants to pay for the
5 cost to permanently eliminate the hazards to public health and safety and abate the
6 temporary public nuisance.

7 343. To eliminate the hazard to public health and safety, and abate the
8 public nuisance, a “multifaceted, collaborative public health and law enforcement
9 approach is urgently needed.”¹⁹⁶

10 344. A comprehensive response to this crisis must focus on preventing
11 new cases of opioid addiction, identifying early opioid-addicted individuals, and
12 ensuring access to effective opioid addiction treatment while safely meeting the
13 needs of patients experiencing pain.¹⁹⁷

14 345. These community-based problems require community-based
15 solutions that have been limited by “budgetary constraints at the state and Federal
16 levels.”¹⁹⁸

17 346. Having profited enormously through the aggressive sale, misleading
18 promotion, and irresponsible distribution of opiates, Defendants should be
19 required to take responsibility for the financial burdens their conduct has inflicted
20 upon the Plaintiffs and Plaintiffs’ Community.

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¹⁹⁶ See Rose A. Rudd et al., *Increases in Drug and Opioid Overdose Deaths—United States, 2000–2014*, 64 Morbidity & Mortality Wkly. Rep. 1378 (2016), at 1145.

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25 ¹⁹⁷ See Johns Hopkins Bloomberg School of Public Health, *The Prescription Opioid Epidemic: An Evidence-Based Approach* (G. Caleb Alexander et al. eds., 2015), http://www.jhsph.edu/research/centers-and-institutes/center-for-drug-safety-and-effectiveness/research/prescription-opioids/JHSPH_OPIOID_EPIDEMIC_REPORT.pdf.

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27 ¹⁹⁸ See Office of Nat'l Drug Control Policy, Exec. Office of the President, *Epidemic: Responding to America's Prescription Drug Abuse Crisis* (2011), https://www.ncjrs.gov/pdffiles1/ondcp/rx_abuse_plan.pdf.

1 **F. DEFENDANTS' FRAUDULENT AND DECEPTIVE MARKETING**
2 **OF OPIOIDS DIRECTLY CAUSED HARM TO THE COUNTY.**

3 347. In the first instance, Plaintiff The County was damaged directly,
4 through its payments of false claims for chronic opioid therapy by its workers'
5 compensation program.

6 348. The Defendants' marketing of opioids caused health care providers to
7 prescribe and Plaintiff, through its workers' compensation program, to pay for
8 prescriptions of opioids to treat chronic pain. Because of the Defendants'
9 unbranded marketing, health care providers wrote and the County paid for
10 prescriptions opioids for chronic pain that were filled not only with their drugs,
11 but with opioids sold by other manufacturers. All of these prescriptions were
12 caused by Defendants' fraudulent marketing and therefore all of them constitute
13 false claims. Because, as laid out below, The County is obligated to cover
14 medically necessary and reasonably required care, it had no choice but to pay
15 these false and fraudulent claims.

16 349. The fact that the County would pay for these ineligible prescriptions
17 is both the foreseeable and intended consequence of the Defendants' fraudulent
18 marketing scheme. The Defendants set out to change the medical and general
19 consensus supporting chronic opioid therapy *so that* doctors would prescribe and
20 government payors, such as the County, would pay for long-term prescriptions of
21 opioids to treat chronic pain despite the absence of genuine evidence supporting
22 chronic opioid therapy and the contrary evidence regarding the significant risks
23 and limited benefits from long-term use of opioids.

24 **1. Increase in Opioid Prescribing Nationally**

25 350. Defendants' scheme to change the medical consensus regarding
26 opioid therapy for chronic pain worked. During the year 2000, outpatient retail
27 pharmacies filled 174 million prescriptions for opioids nationwide. During 2009,
28 they provided 83 million more.

1 351. Opioid prescriptions increased even as the percentage of patients
 2 visiting the doctor for pain remained constant.

3 352. A study of 7.8 million doctor visits between 2000 and 2010 found
 4 that opioid prescriptions increased from 11.3% to 19.6% of visits, as NSAID and
 5 acetaminophen prescriptions fell from 38% to 29%, driven primarily by the
 6 decline in NSAID prescribing.¹⁹⁹

7 353. Approximately 20% of the population between the ages of 30 and 44
 8 and nearly 30% of the population over 45 have used opioids. Indeed, “[o]pioids
 9 are the most common means of treatment for chronic pain.”²⁰⁰ From 1980 to 2000,
 10 opioid prescriptions for chronic pain visits doubled. This is the result not of an
 11 epidemic of pain, but an epidemic of prescribing. A study of 7.8 million doctor
 12 visits found that prescribing for pain increased by 73% between 2000 and 2010 –
 13 even though the number of office visits in which patients complained of pain did
 14 not change and prescribing of non-opioid pain medications decreased. For back
 15 pain alone – one of the most common chronic pain conditions – the percentage of
 16 patients prescribed opioids increased from 19% to 29% between 1999 and 2010,
 17 even as the use of NSAIDs, or acetaminophen declined and referrals to physical
 18 therapy remained steady – and climbing.

19 354. This increase corresponds with, and was caused by, the Defendants’
 20 massive marketing push. The industry’s spending nationwide on marketing of
 21 opioids stood at more than \$20 million per quarter and \$91 million annually in
 22 2000. By 2011, that figure hit its peak of more than \$70 million per quarter and
 23 \$288 million annually, a more than three-fold increase. By 2014, the figures
 24 dropped to roughly \$45 million per quarter and \$182 million annually, as the
 25

26 ¹⁹⁹ Matthew Daubress et al., Ambulatory Diagnosis and Treatment of
 27 Nonmalignant Pain in the United States, 2000-2010, 51 (10) Med. Care 870
 (2013).

28 ²⁰⁰ Deborah Grady et al., *Opioids for Chronic Pain*, 171 (16) Arch. Intern. Med.
 1426 (2011).

1 Defendants confronted increased concern regarding opioid addiction, abuse, and
2 diversion. Even so, the Defendants still spend double what they spent in 2000 on
3 opioid marketing.

4 355. Based on information and belief, by far the largest component of this
5 spending was opioid drug makers' detailing visits to individual doctors, with total
6 detailing expenditures more than doubling between 2000 and 2014 and now
7 standing at \$168 million annually.

8 **2. The County's Increased Spending on Opioids through Self-Insured
9 Workers' Compensation Program.**

10 356. Commensurate with the Defendants' heavy promotion of opioids and
11 the resultant massive upswing in prescribing of opioids nationally, the County has
12 seen its own spending on opioids – through claims paid by its workers'
13 compensation program – increase.

14 **i. Workers' Compensation Programs**

15 357. Plaintiff The County, through a partially self-insured program,
16 provides workers' compensation, including prescription drug benefits, to eligible
17 employees injured in the course of their employment. When an employee is
18 injured on the job, he or she may file a claim for workers' compensation, and if
19 the injury is deemed work-related, The County is responsible for paying its share
20 of the employee's medical costs and lost wages.

21 358. The County uses a third party vendor to help manage medical
22 benefits under the workers' compensation program. Doctors submit claims to the
23 County's workers' compensation program for the costs associated with
24 prescribing opioids, including office visits and toxicology screens for patients
25 prescribed opioids.

26 359. Upon information and belief, the County's vendor uses a pharmacy
27 and drug utilization management program to manage prescriptions for the
28 County's workers' compensation program.

1 360. The County's workers' compensation program covers all costs
2 associated with opioids, including treatment related to any adverse outcomes from
3 chronic opioid therapy, such as addiction treatment.

4 361. The Defendants cause doctors and pharmacies to submit, and the
5 County to pay claims to its workers' compensation program that were false by: (a)
6 causing doctors to write prescriptions for chronic opioid therapy based on
7 deceptive representations regarding the risks, benefits, and superiority of those
8 drugs; (b) causing doctors to certify that these prescriptions and associated
9 services were medically necessary; (c) causing claims to be submitted for drugs
10 that were promoted for off-label uses and misbranded, and therefore not FDA-
11 approved; and (d) distorting the standard of care for treatment of chronic pain so
12 that doctors would feel not only that it was appropriate, but required, that they
13 prescribe and continue prescriptions for opioids long-term to treat chronic pain.
14 Each – or any – of these factors made claims to the County for chronic opioid
15 therapy false.

16 362. The California Workers' Compensation law requires employers or
17 their insurers to pay for, *inter alia*, medical and surgical services, hospital and
18 nursing services, and medicines that are reasonably required to cure or relieve the
19 injured worker from the effects of his or her injury. Cal. Lab. Code § 4600.

20 363. In prescribing opioids for chronic pain, doctors certify that the
21 treatment is medically necessary and reasonably required, and the workers'
22 compensation program authorizes payment from The County's funds.

23 364. The County's workers' compensation program is obligated to cover
24 all "medically necessary" and "reasonably required" treatment arising from a
25 compensable work-related injury.

26 365. As described above, however, the use of opioids to treat chronic pain
27 is not medically necessary or reasonably required in that their risks do not
28 materially exceed their benefits; they do not improve physiological function; and

their use is not consistent with guidelines that are *scientifically based* (as opposed to marketing driven).

3 366. Nevertheless, the amount of such prescriptions paid by worker's
4 compensation programs is monumental. A study of the National Council on
5 Compensation Insurance ("NCCI") concluded that, in 2011, approximately 38%
6 of pharmacy costs in workers' compensation are for opioids and opioid
7 combinations, amounting to approximately \$1.4 billion.

367. Upon information and belief, those trends are reflected in the
County's experience with paying for opioids through its worker's compensation
plan.

368. The County incurred costs associated with the prescribing of opioids,
such as doctors' visits or toxicology screens, and the costs of treating the adverse
effects of prescribing opioids long-term such as overdose and addiction.

369. However, the costs of long-term opioid use are not limited to costs of
opioid prescriptions. Long-term opioid use is accompanied by a host of
consequential costs, including costs related to abuse, addiction, and death.

370. These claims – and their attendant and consequential costs – for
opioids prescribed for chronic pain, as opposed to acute and cancer or end-of-life
pain, were ineligible for payment and the result of the Defendant’s fraudulent
scheme.

22 ii. The County's Increased Costs Correlate with the Defendants' Promotion.

371. Upon information and belief, a review of the County's costs related
to opioid prescriptions, and the costs associated with those prescriptions, will
show that as the Defendants spent more to promote their drugs, doctors began
prescribing them more often and as a result, the costs to the County went up.

372. It is also distressing (and a sign of further problems ahead) that the
drop in opioid prescribing beginning in 2014 has been accompanied by a

1 corresponding increase in the Defendants' promotional spending, which is headed
2 towards a new high, despite evidence of the grave toll that opioids are taking on
3 law enforcement, public health, and individual lives.

4 373. The County asserts that each Defendant made misrepresentations or
5 misrepresentation by omission of material facts by their employees, agents, or co-
6 conspirators to prescribing physicians who then wrote opioid prescriptions for
7 which the County paid. Furthermore, the County asserts that specific details about
8 the names of the employees, agents, or co-conspirators, the substance of the
9 misrepresentations or omissions, the time and date and location of said
10 misrepresentations or omissions, and the names of the prescribing physicians who
11 were exposed to each Defendants' misrepresentations or omissions were closely
12 tracked by the Defendants, are in the exclusive possession of the Defendants and
13 the County reasonably believes that such information will be disclosed in
14 discovery.

15 **G. STATUTES OF LIMITATIONS ARE TOLLED AND DEFENDANTS
16 ARE ESTOPPED FROM ASSERTING STATUTES OF
17 LIMITATIONS AS DEFENSES.**

18 **1. Enforcement of a Public Right.**

19 374. No statute of limitation can be pleaded against the Plaintiffs, which
20 seek to enforce strictly public rights.

21 **2. Continuing Conduct.**

22 375. Plaintiffs contend they continue to suffer harm from the unlawful
23 actions by the Defendants.

24 376. The continued tortious and unlawful conduct by the Defendants
25 causes a repeated or continuous injury. The damages have not occurred all at
26 once but have continued to occur and have increased as time progresses. The tort
27 is not completed nor have all the damages been incurred until the wrongdoing
28 ceases. The wrongdoing and unlawful activity by Defendants has not ceased. The

1 public nuisance remains unabated. The conduct causing the damages remains
2 unabated.

3 **3. Equitable Estoppel.**

4 377. To the extent any statute of limitations defense would apply,
5 Defendants are equitably estopped from relying upon a statute of limitations
6 defense because they undertook active efforts to deceive Plaintiffs and to
7 purposefully conceal their unlawful conduct and fraudulently assure the public,
8 including the State, the Plaintiffs, and Plaintiffs' Community, that they were
9 undertaking efforts to comply with their obligations under the state and federal
10 controlled substances laws, all with the goal of protecting their registered
11 manufacturer or distributor status in the State and to continue generating profits.
12 Notwithstanding the allegations set forth above, the Defendants affirmatively
13 assured the public, including the State, the Plaintiffs, and Plaintiffs' Community,
14 that they are working to curb the opioid epidemic.

15 378. For example, a Cardinal Health executive claimed that it uses
16 "advanced analytics" to monitor its supply chain, and assured the public it was
17 being "as effective and efficient as possible in constantly monitoring, identifying,
18 and eliminating any outside criminal activity."²⁰¹

19 379. Similarly, McKesson publicly stated that it has a "best-in-class
20 controlled substance monitoring program to help identify suspicious orders," and
21 claimed it is "deeply passionate about curbing the opioid epidemic in our
22 country."²⁰²

23
24
25
26 ²⁰¹ Bernstein et al., *supra*.

27 ²⁰² Scott Higham et al., *Drug Industry Hired Dozens of Officials from the DEA as*
28 *the Agency Tried to Curb Opioid Abuse*, Wash. Post, Dec. 22, 2016,
https://www.washingtonpost.com/investigations/key-officials-switch-sides-from-dea-to-pharmaceutical-industry/2016/12/22/55d2e938-c07b-11e6-b527-949c5893595e_story.html.

1 380. Moreover, in furtherance of their effort to affirmatively conceal their
 2 conduct and avoid detection, the Distributor Defendants, through their trade
 3 associations, HDMA and NACDS, filed an *amicus* brief in *Masters*
 4 *Pharmaceuticals*, which made the following statements:²⁰³

- 5 a. “HDMA and NACDS members not only have statutory and
 regulatory responsibilities to guard against diversion of controlled
 prescription drugs, but undertake such efforts as responsible
 members of society.”
- 6 b. “DEA regulations that have been in place for more than 40 years
 require distributors to *report* suspicious orders of controlled
 substances to DEA based on information readily available to them
 (e.g., a pharmacy’s placement of unusually frequent or large orders).”
- 7 c. “Distributors take seriously their duty to report suspicious orders,
 utilizing both computer algorithms and human review to detect
 suspicious orders based on the generalized information that *is*
 available to them in the ordering process.”
- 8 d. “A particular order or series of orders can raise red flags because of
 its unusual size, frequency, or departure from typical patterns with a
 given pharmacy.”
- 9 e. “Distributors also monitor for and report abnormal behavior by
 pharmacies placing orders, such as refusing to, provide business
 contact information or insisting on paying in cash.”

10 Through the above statements made on their behalf by their trade associations,
 11 and other similar statements assuring their continued compliance with their legal
 12 obligations, the Distributor Defendants not only acknowledged that they
 13 understood their obligations under the law, but they further affirmed that their
 14 conduct was in compliance with those obligations.

15 381. The Distributor Defendants have also concealed and prevented
 16 discovery of information, including data from the ARCOS database that will
 17 confirm their identities and the extent of their wrongful and illegal activities.

18 382. The Manufacturer Defendants distorted the meaning or import of
 19 studies they cited and offered them as evidence for propositions the studies did not
 20 support. The Manufacturer Defendants invented “pseudoaddiction” and promoted
 21

22 ²⁰³ Brief for HDMA and NACDS, 2016 WL 1321983, at *3-4, *25.

1 it to an unsuspecting medical community. The Manufacturer Defendants provided
2 the medical community with false and misleading information about ineffectual
3 strategies to avoid or control opioid addiction. The Manufacturer Defendants
4 recommended to the medical community that dosages be increased, without
5 disclosing the risks. The Manufacturer Defendants spent millions of dollars over a
6 period of years on a misinformation campaign aimed at highlighting opioids'
7 alleged benefits, disguising the risks, and promoting sales. The medical
8 community, consumers, the State, and Plaintiffs' Community were duped by the
9 Manufacturer Defendants' campaign to misrepresent and conceal the truth about
10 the opioid drugs that they were aggressively pushing in the State and in Plaintiffs'
11 Community.

12 383. Defendants intended that their actions and omissions would be relied
13 upon, including by Plaintiffs and Plaintiffs' Community. Plaintiffs and Plaintiffs'
14 Community did not know, and did not have the means to know, the truth due to
15 Defendants' actions and omissions.

16 384. The Plaintiffs and Plaintiffs' Community reasonably relied on
17 Defendants' affirmative statements regarding their purported compliance with
18 their obligations under the law and consent orders. To the extent statutes of
19 limitations could apply to Plaintiffs' claims, Plaintiffs failed to commence an
20 action within the statutory periods because of reliance on Defendants' wrongful
21 conduct.

22 385. Defendants are estopped from asserting a statute of limitations
23 defense because their conduct and misrepresentations were so unfair and
24 misleading as to outweigh the public's interest in setting limitations on bringing
25 actions.

26 **4. Fraudulent Concealment**

27 386. To the extent any statute of limitations defense would apply,
28 Plaintiffs' claims are further subject to equitable tolling, stemming from

1 Defendants' knowing and fraudulent concealment of the facts alleged herein. As
2 alleged herein, Defendants knew of the wrongful acts set forth above, had material
3 information pertinent to their discovery, and concealed them from the Plaintiffs
4 and Plaintiffs' Community. The Plaintiffs did not know, or could not have known
5 through the exercise of reasonable diligence, of their causes of action, as a result
6 of Defendants' conduct.

7 387. The purposes of the statutes of limitations period, if any, are satisfied
8 because Defendants cannot claim prejudice due to a late filing where the Plaintiffs
9 filed suit promptly upon discovering the facts essential to their claims, described
10 herein, which Defendants knowingly concealed.

11 388. In light of their statements to the media, in legal filings and in
12 settlements, it is clear that Defendants had actual or constructive knowledge that
13 their conduct was deceptive, in that they consciously concealed the schemes set
14 forth herein.

15 389. Defendants continually and secretly engaged in their scheme to avoid
16 compliance with their legal obligations. Only Defendants and their agents knew or
17 could have known about Defendants' unlawful actions because Defendants made
18 deliberate efforts to conceal their conduct. As a result of the above, the Plaintiffs
19 were unable to obtain vital information bearing on their claims absent any fault or
20 lack of diligence on their part.

V. LEGAL CAUSES OF ACTION

COUNT I

PUBLIC NUISANCE

(Brought by The People Against all Defendants)

25 390. Plaintiff, The People, incorporate by reference all other paragraphs of
26 this Complaint as if fully set forth here, and further allege as follows.

391. Each Defendant is liable for public nuisance because its conduct at issue has caused an unreasonable and substantial interference with a right

1 common to the general public. *See Cty. of Santa Clara v. Atl. Richfield Co.*, 137
 2 Cal. App. 4th 292, 305, 40 Cal. Rptr. 3d 313, 325 (2006) (cit. om.). The
 3 interference is substantial “if it causes significant harm and unreasonable if its
 4 social utility is outweighed by the gravity of the harm inflicted.” *Id.* The causation
 5 element of a public nuisance cause of action is satisfied if the defendant’s conduct
 6 is a substantial factor in bringing about the result. *People v. Conagra Grocery*
 7 *Prod. Co.*, 17 Cal. App. 5th 51, 101-02, 227 Cal. Rptr. 3d 499, 543 (Ct. App.
 8 2017), *reh'g denied* (Dec. 6, 2017), *review denied* (Feb. 14, 2018).

9 392. Under California law, a nuisance is “anything which is injurious to
 10 health, including but not limited to the illegal sale of controlled substances, or is
 11 indecent or offensive to the senses, or an obstruction to the free use of property, so
 12 as to interfere with the comfortable enjoyment of life or property.” Cal. Civ. Code
 13 § 3479.

14 393. California defines a “public nuisance” as “one which affects at the
 15 same time an entire community or neighborhood, or any considerable number of
 16 persons, although the extent of the annoyance or damage inflicted upon
 17 individuals may be unequal.” Cal. Civ. Code § 3480.

18 394. Defendants have created a public nuisance under California law.

19 395. The People have standing to bring this claim to abate the public
 20 nuisance due to the opioid epidemic which was created by Defendants and which
 21 is affecting and causing harm in Plaintiffs’ Community. *See* Cal. Civ. Proc. Code
 22 § 731.

23 396. By causing dangerously addictive drugs to flood the community, and
 24 to be diverted for illicit purposes, in contravention of federal and state law, each
 25 Defendant has injuriously affected rights common to the general public,
 26 specifically including the rights of the people of the Plaintiffs’ Community to
 27 public health, public safety, public peace, public comfort, and public convenience.

28

1 The public nuisance caused by Defendants' diversion of dangerous drugs has
2 caused substantial annoyance, inconvenience, and injury to the public.

3 397. By selling dangerously addictive opioid drugs diverted from a
4 legitimate medical, scientific, or industrial purpose, Defendants have committed a
5 course of conduct that injuriously affects the safety, health, and morals of the
6 people of the Plaintiffs' Community.

7 398. By failing to maintain a closed system that guards against diversion
8 of dangerously addictive drugs for illicit purposes, Defendants injuriously affected
9 public rights, including the right to public health, public safety, public peace, and
10 public comfort of the people of the Plaintiffs' Community.

11 399. By affirmatively promoting opioids for use for chronic pain,
12 affirmatively promoting opioids as not addictive, affirmatively fostering a
13 misunderstanding of the signs of addiction and how to reliably identify and safely
14 prescribe opioids to patients predisposed to addiction, affirmatively exaggerating
15 the risks of competing medications like NSAIDs, affirmatively promoting their
16 so-called abuse-deterring opioid formulations and affirmatively identifying and
17 targeting susceptible prescribers and vulnerable patient populations, Defendants
18 injuriously affected public rights, including the right to public health, public
19 safety, public peace, and public comfort of the people of the Plaintiffs'
20 Community. The public nuisance caused by Defendants' affirmative promotion
21 of opioids has caused substantial annoyance, inconvenience, and injury to the
22 public.

23 400. Defendants' interference with the comfortable enjoyment of life in
24 the Plaintiffs' Community is unreasonable because there is little social utility to
25 opioid diversion and abuse, and any potential value is outweighed by the gravity
26 of the harm inflicted by Defendants' actions.

27 401. The People allege that Defendants' wrongful and illegal actions have
28 created a public nuisance. Each Defendant is liable for public nuisance because its

1 conduct at issue has caused an unreasonable and substantial interference with a
2 right common to the general public.

3 402. The Defendants have intentionally and/or unlawfully created a
4 nuisance.

5 403. The residents of Plaintiffs' Community have a common right to be
6 free from conduct that creates an unreasonable jeopardy to the public health,
7 welfare and safety, and to be free from conduct that creates a disturbance and
8 reasonable apprehension of danger to person and property.

9 404. Defendants intentionally, unlawfully, and recklessly manufacture,
10 market, distribute, promote and sell prescription opioids that Defendants know, or
11 reasonably should know, will be diverted, causing widespread distribution of
12 prescription opioids in and/or to Plaintiffs' Community, resulting in addiction and
13 abuse, an elevated level of crime, death and injuries to the residents of Plaintiffs'
14 Community, a higher level of fear, discomfort and inconvenience to the residents
15 of Plaintiffs' Community, and direct costs to Plaintiffs' Community.

16 405. Defendants have unlawfully and/or intentionally caused and
17 permitted dangerous drugs under their control to be diverted such as to injure the
18 Plaintiffs' Community and its residents.

19 406. Defendants have unlawfully and/or intentionally promoted and
20 distributed opioids or caused opioids to be distributed without maintaining
21 effective controls against diversion. Such conduct was illegal. Defendants'
22 failures to maintain effective controls against diversion include Defendants'
23 failure to effectively monitor for suspicious orders, report suspicious orders,
24 and/or stop shipment of suspicious orders.

25 407. Defendants have caused a significant and unreasonable interference
26 with the public health, safety, welfare, peace, comfort and convenience, and
27 ability to be free from disturbance and reasonable apprehension of danger to
28 person or property.

1 408. Defendants' conduct in illegally distributing and selling prescription
2 opioids, or causing such opioids to be distributed and sold, where Defendants
3 know, or reasonably should know, such opioids will be diverted and possessed
4 and/or used illegally in Plaintiffs' Community is of a continuing nature.

5 409. Defendants' actions have been of a continuing nature and have
6 produced a significant effect upon the public's rights, including the public's right
7 to health and safety.

8 410. A violation of any rule or law controlling the distribution of a drug of
9 abuse in Plaintiffs' Community and the State is a public nuisance.

10 411. Defendants' distribution of opioids while failing to maintain effective
11 controls against diversion was proscribed by statute and regulation.

12 412. Defendants' ongoing conduct produces an ongoing nuisance, as the
13 prescription opioids that they allow and/or cause to be illegally distributed and
14 possessed in Plaintiffs' Community will be diverted, leading to abuse, addiction,
15 crime, and public health costs.

16 413. Because of the continued use and addiction caused by these illegally
17 distributed opioids, The People will continue to fear for their health, safety and
18 welfare, and will be subjected to conduct that creates a disturbance and reasonable
19 apprehension of danger to person and property.

20 414. Defendants know, or reasonably should know, that their conduct will
21 have an ongoing detrimental effect upon the public health, safety and welfare, and
22 the public's ability to be free from disturbance and reasonable apprehension of
23 danger to person and property.

24 415. Defendants know, or reasonably should know, that their conduct
25 causes an unreasonable and substantial invasion of the public right to health,
26 safety and welfare and the public's ability to be free from disturbance and
27 reasonable apprehension of danger to person and property.
28

1 416. Defendants are aware, and at a bare minimum certainly should be
2 aware, of the unreasonable interference that their conduct has caused in Plaintiffs'
3 Community. Defendants are in the business of manufacturing, marketing, selling,
4 and distributing prescription drugs, including opioids, which are specifically
5 known to Defendants to be dangerous because *inter alia* these drugs are defined
6 under federal and state law as substances posing a high potential for abuse and
7 severe addiction. *See, e.g.*, 21 U.S.C. § 812 (b)(2). Defendants created an
8 intentional nuisance. Defendants' actions created and expanded the abuse of
9 opioids, drugs specifically codified as constituting severely harmful substances.

10 417. Defendants' conduct in promoting, marketing, distributing, and
11 selling prescription opioids which the Defendants know, or reasonably should
12 know, will likely be diverted for non-legitimate, non-medical use, creates a strong
13 likelihood that these illegal distributions of opioids will cause death and injuries to
14 residents in Plaintiffs' Community and otherwise significantly and unreasonably
15 interfere with public health, safety and welfare, and with The People's right to be
16 free from disturbance and reasonable apprehension of danger to person and
17 property.

18 418. It is, or should be, reasonably foreseeable to defendants that their
19 conduct will cause deaths and injuries to residents in Plaintiffs' Community, and
20 will otherwise significantly and unreasonably interfere with public health, safety
21 and welfare, and with the public's right to be free from disturbance and reasonable
22 apprehension of danger to person and property.

23 419. The prevalence and availability of diverted prescription opioids in the
24 hands of irresponsible persons and persons with criminal purposes in Plaintiffs'
25 Community not only causes deaths and injuries, but also creates a palpable
26 climate of fear among residents in Plaintiffs' Community where opioid diversion,
27 abuse, addiction are prevalent and where diverted opioids tend to be used
28 frequently.

1 420. Defendants' conduct makes it easier for persons to divert prescription
2 opioids, constituting a dangerous threat to the public.

3 421. Defendants' actions were, at the least, a substantial factor in opioids
4 becoming widely available and widely used for non-medical purposes. Because of
5 Defendants' affirmative promotion of opioids and special positions within the
6 closed system of opioid distribution, without Defendants' actions, opioid use
7 would not have become so widespread, and the enormous public health hazard of
8 prescription opioid and heroin overuse, abuse, and addiction that now exists
9 would have been averted.

10 422. The presence of diverted prescription opioids in Plaintiffs'
11 Community, and the consequence of prescription opioids having been diverted in
12 Plaintiffs' Community, proximately results in and/or substantially contributes to
13 the creation of significant future costs to The People and to Plaintiffs' Community
14 in order to enforce the law, equip its police force and treat the victims of opioid
15 abuse and addiction.

16 423. Stemming the flow of illegally distributed prescription opioids, and
17 abating the nuisance caused by the illegal flow of opioids, will help to alleviate
18 this problem, save lives, prevent injuries and make Plaintiffs' Community a safer
19 place to live.

20 424. Defendants' conduct is a direct and proximate cause of and/or a
21 substantial contributing factor to opioid addiction and abuse in Plaintiffs'
22 Community, costs that will be borne by Plaintiffs' Community and The People,
23 and a significant and unreasonable interference with public health, safety and
24 welfare, and with the public's right to be free from disturbance and reasonable
25 apprehension of danger to person and property.

26 425. Defendants' conduct constitutes a public nuisance and, if unabated,
27 will continue to threaten the health, safety and welfare of the residents of
28 Plaintiffs' Community, creating an atmosphere of fear and addiction that tears at

1 the residents' sense of well-being and security. The People have a clearly
2 ascertainable right to prospectively abate conduct that perpetuates this nuisance.

3 426. Defendants created an intentional nuisance. Defendants' actions
4 created and expanded the abuse of opioids, which are dangerously addictive, and
5 the ensuing associated plague of prescription opioid and heroin addiction.
6 Defendants knew the dangers to public health and safety that diversion of opioids
7 would create in Plaintiffs' Community; however, Defendants intentionally and/or
8 unlawfully failed to maintain effective controls against diversion through proper
9 monitoring, reporting and refusal to fill suspicious orders of opioids. Defendants
10 intentionally and/or unlawfully distributed opioids or caused opioids to be
11 distributed without reporting or refusing to fill suspicious orders or taking other
12 measures to maintain effective controls against diversion. Defendants
13 intentionally and/or unlawfully continued to ship and failed to halt suspicious
14 orders of opioids, or caused such orders to be shipped. Defendants intentionally
15 and/or unlawfully promoted and marketed opioids in manners they knew to be
16 false and misleading. Such actions were inherently dangerous.

17 427. Defendants knew the prescription opioids have a high likelihood of
18 being diverted. It was foreseeable to Defendants that where Defendants distributed
19 prescription opioids or caused such opioids to be distributed without maintaining
20 effective controls against diversion, including monitoring, reporting, and refusing
21 shipment of suspicious orders, that the opioids would be diverted, and create an
22 opioid abuse nuisance in Plaintiffs' Community.

23 428. Defendants' actions also created a nuisance by acting recklessly,
24 negligently and/or carelessly, in breach of their duties to maintain effective
25 controls against diversion, thereby creating an unreasonable and substantial risk of
26 harm.

27

28

1 429. Defendants acted with actual malice because Defendants acted with a
2 conscious disregard for the rights and safety of other persons, and said actions
3 have a great probability of causing substantial harm.

4 430. The public nuisance created, perpetuated and maintained by
5 Defendants can be prospectively abated and further reoccurrence of such harm
6 and inconvenience can be prevented.

7 431. The People further seek to prospectively abate the nuisance created
8 by the Defendants' unreasonable, unlawful, intentional, ongoing, continuing,
9 substantial and persistent actions and omissions and interference with a right
10 common to the public.

11 432. Defendants' intentional and unlawful actions and omissions and
12 unreasonable interference with a right common to the public are of a continuing
13 nature.

14 433. The public nuisance created by Defendants' actions is substantial and
15 unreasonable – it has caused and continues to cause significant harm to the
16 community, and the harm inflicted outweighs any offsetting benefit. The
17 staggering rates of opioid and heroin use resulting from the Defendants'
18 abdication of their gate-keeping and diversion prevention duties, and the
19 Manufacturer Defendants' fraudulent marketing activities, have caused harm to
20 the entire community that includes, but is not limited to the following:

- 21 a. The high rates of use leading to unnecessary opioid abuse, addiction,
22 overdose, injuries, and deaths.
- 23 b. Even children have fallen victim to the opioid epidemic. Easy access
24 to prescription opioids made opioids a recreational drug of choice
25 among teenagers. Even infants have been born addicted to opioids
26 due to prenatal exposure, causing severe withdrawal symptoms and
27 lasting developmental impacts.
- 28 c. Even those residents of Plaintiffs' Community who have never taken
opioids have suffered from the public nuisance arising from
Defendants' abdication of their gate-keeper duties and fraudulent
promotions. Many residents have endured and will endure both the
emotional and financial costs of caring for loved ones addicted to or
injured by opioids, and the loss of companionship, wages, or other

support from family members who have used, abused, become addicted to, overdosed on, or been killed by opioids.

- d. The opioid epidemic has increased and will increase health care costs.
- e. Employers have lost and will continue to lose the value of productive and healthy employees.
- f. Defendants' conduct created and continues to create an abundance of drugs available for criminal use and fueled a new wave of addiction, abuse, and injury.
- g. Defendants' dereliction of duties and/or fraudulent misinformation campaign pushing dangerous drugs resulted in a diverted supply of narcotics to sell, and the ensuing demand of addicts to buy them. More prescription opioids sold by Defendants led to more addiction, with many addicts turning from prescription opioids to heroin. People addicted to opioids frequently require increasing levels of opioids, and many are turning to heroin as a foreseeable result.
- h. The diversion of opioids into the secondary, criminal market and the increased number of individuals who abuse or are addicted to opioids has increased and continues to increase the demands on health care services and law enforcement.
- i. The significant and unreasonable interference with the public rights caused by Defendants' conduct has taxed and continues to tax the human, medical, public health, law enforcement, and financial resources of the Plaintiffs' Community.

434. The People seek all legal and equitable relief as allowed by law, other than such damages disavowed herein, including *inter alia* injunctive relief and expenses to prospectively abate the nuisance.

435. Pursuant to California Code of Civil Procedure section 731, The People request an order from the Court on behalf of The People providing for abatement of Defendants' ongoing violations of California Civil Code Sections 3479 and 3480, and enjoining Defendants from future violations of California Civil Code Sections 3479 and 3480.

436. Each Defendant created or assisted in the creation of the epidemic of opioid use and injury and each Defendant is jointly and severally liable for abating it.

COUNT II
PUBLIC NUISANCE

(Brought by The County Against all Defendants)

437. Plaintiff, The County, incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.

438. As set forth above, each Defendant is liable for public nuisance because its conduct at issue has caused an unreasonable and substantial interference with a right common to the general public. *See, e.g., Cty. of Santa Clara v. Atl. Richfield Co.*, 137 Cal. App. 4th 292, 305, 40 Cal. Rptr. 3d 313, 325 (2006); Cal. Civ. Code §§ 3479; 3480.

439. Defendants have created a public nuisance under California law.

440. The County has standing to bring this claim for damages incurred to its property by the public nuisance due to the opioid epidemic which was created by Defendants and which is affecting and causing harm to The County. An action can be “brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by a nuisance, as defined in Section 3479 of the Civil Code, and by the judgment in that action the nuisance may be enjoined or abated as well as damages recovered therefor.” Cal. Civ. Proc. Code § 731. “Where a public entity can show it has a property interest injuriously affected by the nuisance, then, like any other such property holder, it should be able to pursue the full panoply of tort remedies available to private persons.” *Selma Pressure Treating Co. v. Osmose Wood Preserving Co.*, 221 Cal. App. 3d 1601, 1616, 271 Cal. Rptr. 596, 604 (Ct. App. 1990).

441. The County has suffered harm to its property interests that is different from the type of harm suffered by the general public and has incurred substantial costs deriving from having to replace and retrofit its property that has been damaged and is being damaged by Defendants' intentional, unlawful, and

1 reckless manufacturing, marketing, distribution, promotion and sale of
2 prescription opioids.

3 442. Defendants intentionally, unlawfully, and recklessly manufacture,
4 market, distribute, promote and sell prescription opioids that Defendants know, or
5 reasonably should know, will be diverted, causing widespread distribution of
6 prescription opioids in and/or to Plaintiffs' Community, resulting in The County
7 having to repair and remake its infrastructure, property and systems that have been
8 damaged by Defendants' action, including, *inter alia*, its property and systems to
9 treat addiction and abuse, to respond to and manage an elevated level of
10 emergencies and crime, and to respond to and treat injuries and process deaths in
11 Plaintiffs' Community.

12 443. The County owns property which has been injuriously affected by the
13 public nuisance caused by Defendants. These property interests, include, *inter*
14 *alia*, additional naloxone doses – The County owns these doses which have been
15 and are destroyed when The County has to administer them to persons who are
16 overdosing as a result of Defendants' intentional, unlawful, and reckless
17 manufacturing, marketing, distribution, promotion and sale of prescription
18 opioids. The County's emergency response system and medical services
19 equipment and other materials will similarly need to be improved and replaced
20 because this property has been and is being damaged due to persons who are
21 overdosing as a result of Defendants' intentional, unlawful, and reckless
22 manufacturing, marketing, distribution, promotion and sale of prescription
23 opioids. The County also has damage to its property related to evidence gathering
24 and testing for the prosecution of drug related crimes.

25 444. In addition, The County has suffered damages to its infrastructure,
26 which will need to be retrofitted and repaired as a result of Defendants'
27 intentional, unlawful, and reckless manufacturing, marketing, distribution,
28 promotion and sale of prescription opioids. This damage includes damage to its

1 law enforcement, medical and rehabilitation infrastructures and systems which are
2 now inadequate to handle the new undue burden on these systems caused by
3 Defendants' conduct. This includes, *inter alia*, repairing and upgrading jail
4 facilities to add additional jail space and beds for opioid addicts who commit
5 crimes as well as retrofitting the facilities to treat inmates' addictions. This also
6 includes repairing and upgrading court systems for prosecution and defense of
7 drug-related crimes. This also includes repairing and upgrading treatment facilities
8 for members of Plaintiffs' Community addicted to opioids as well as property that
9 is part of and used by The County's Department of the Sheriff-Coroner which
10 must investigate deaths known or suspected to be due to drug intoxication.

11 445. The County owns, operates, manages, maintains, and otherwise has
12 property interests in, all of which have been injured, damaged, or affected by
13 Defendants, the following property:

- 14 a. County Jail system, including buildings, cells, beds, supplies,
15 resources, materials, personnel, equipment, and other property.
- 16 b. County Probation system, including offices, personnel, supplies,
17 resources, materials, equipment, and other property.
- 18 c. County District Attorney system, including offices, personnel,
19 supplies, resources, materials, equipment, and other property.
- 20 d. County Health and Human Services system, including offices,
21 personnel, supplies, resources, materials, equipment, and other
22 property.
- 23 e. County Sheriff and Law Enforcement systems, including Narcan,
24 naloxone, offices, personnel, supplies, resources, materials,
25 equipment, and other property.
- 26 f. County Emergency Responder system, including equipment, Narcan,
27 naloxone, materials, supplies, personnel, offices, and other property.

1 g. County Public Health system, including offices, personnel, resources,
2 supplies, equipment, materials, and other property.

3 h. County Public Defender System, including personnel, offices,
4 supplies, equipment, materials, resources, and other property.

5 446. As set forth above in allegations specifically incorporated herein, by
6 selling dangerously addictive opioid drugs diverted from a legitimate medical,
7 scientific, or industrial purpose, Defendants have committed a course of conduct
8 that injuriously affects The County and its property.

9 447. The public nuisance caused by Defendants' affirmative promotion of
10 opioids has caused substantial annoyance, inconvenience, and injury to The
11 County and The County's property.

12 448. The acts by Defendants which have injured The County and its
13 property are unreasonable because there is little social utility to opioid diversion
14 and abuse, and any potential value is outweighed by the gravity of the harm
15 inflicted by Defendants' actions.

16 449. Defendants have unlawfully and/or intentionally caused and
17 permitted dangerous drugs under their control to be diverted such as to injure the
18 County's property.

19 450. Defendants' conduct in illegally distributing and selling prescription
20 opioids, or causing such opioids to be distributed and sold, where Defendants
21 know, or reasonably should know, such opioids will be diverted and possessed
22 and/or used illegally in Plaintiffs' Community is of a continuing nature and has
23 produced a significant injury to The County and its property.

24 451. Defendants' ongoing conduct produces an ongoing nuisance.

25 452. Defendants know, or reasonably should know, that their conduct will
26 have an ongoing detrimental effect upon The County and The County's property.

27 453. Defendants' actions were, at the least, a substantial factor causing the
28 harm to The County and its property.

1 454. The presence of diverted prescription opioids in Plaintiffs' 2 Community, and the consequence of prescription opioids having been diverted in 3 Plaintiffs' Community, proximately results in and/or substantially contributes to 4 the creation of significant past and future costs to The County as it must repair and 5 retrofit its property in order to enforce the law and treat the victims of opioid 6 abuse and addiction.

7 455. Defendants' conduct is a direct and proximate cause of and/or a 8 substantial contributing factor to opioid addiction and abuse in Plaintiffs' 9 Community, costs that will be borne by Plaintiffs' Community and The County.

10 456. As a direct and proximate result of Defendants' creation of a public 11 nuisance, The County has suffered and continues to suffer damages to its property 12 requiring investigation, repair, remediation, and other costs to be determined at 13 trial.

14 457. The damages available to The County include, *inter alia*, recoupment 15 of governmental costs, flowing from the damages to The County's property which 16 The County seeks to recover damages for. Defendants' conduct is ongoing and 17 persistent, and The County seeks all damages flowing from Defendants' conduct.

18 458. As a direct result of Defendants' conduct, The County and Plaintiffs' 19 Community have suffered actual injury and damages including, but not limited to, 20 significant expenses for repairing and retrofitting property related to police, 21 emergency, health, prosecution, corrections and other services. The County here 22 seeks recovery for its own harm.

23 459. The County has sustained specific and special injuries because its 24 damages include, *inter alia*, injury to the property and systems of its health 25 services, law enforcement, and coroner, as well as property costs related to opioid 26 addiction treatment and overdose prevention, as described in this Complaint.

27

28

1 460. The County seeks all legal and equitable relief as allowed by law,
2 including *inter alia* compensatory damages, from the Defendants for the creation
3 of a public nuisance, attorney fees and costs, and pre- and post-judgment interest.

COUNT III

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

18 U.S.C. § 1961, et seq.

(Against Defendants Purdue, Cephalon, Janssen, and Endo)

(The “Opioid Marketing Enterprise”)

9 461. Plaintiff, The County, incorporates by reference all other paragraphs
10 of this Complaint as if fully set forth herein, and further alleges as follows.

11 462. Plaintiff, The County, brings this Count on behalf of itself against the
12 following Defendants, as defined above: Purdue, Cephalon, Janssen, and Endo
13 (referred to collectively for this Claim as the “RICO Marketing Defendants”).

463. At all relevant times, the RICO Marketing Defendants were and are
“persons” under 18 U.S.C. § 1961(3) because they are entities capable of holding,
and do hold, “a legal or beneficial interest in property.”

17 464. Section 1962(c) of RICO makes it unlawful “for any person
18 employed by or associated with any enterprise engaged in, or the activities of
19 which affect, interstate or foreign commerce, to conduct or participate, directly or
20 indirectly, in the conduct of such enterprise’s affairs through a pattern of
21 racketeering activity.” 18 U.S.C. § 1962(c).

22 465. The term “enterprise” is defined as including “any individual,
23 partnership, corporation, association, or other legal entity, and any union or group
24 of individuals associated in fact although not a legal entity.” 18 U.S.C. § 1961(4).
25 The definition of “enterprise” in Section 1961(4) includes legitimate and
26 illegitimate enterprises within its scope. Specifically, the section “describes two
27 separate categories of associations that come within the purview of an ‘enterprise’
28 -- the first encompassing organizations such as corporations, partnerships, and

1 other ‘legal entities,’ and the second covering ‘any union or group of individuals
2 associated in fact although not a legal entity.’” *United State v. Turkette*, 452 U.S.
3 576, 577 (1981).

4 466. Beginning in the early 1990s, the RICO Marketing Defendants
5 aggressively sought to bolster their revenue, increase profit, and grow their share
6 of the prescription painkiller market by unlawfully increasing the volume of
7 opioids they sold. The RICO Marketing Defendants knew that they could not
8 increase their profits without misrepresenting that opioids were non-addictive and
9 safe for the long-term treatment of chronic pain.

10 467. The generally accepted standards of medical practice prior to the
11 1990s dictated that opioids should only be used in short durations to treat acute
12 pain, pain relating to recovery from surgery, or for cancer or palliative (end-of-
13 life) care. Due to the evidence of addiction and lack of evidence indicating that
14 opioids improved patients’ ability to overcome pain and function, the use of
15 opioids for chronic pain was discouraged or prohibited. As a result, doctors
16 generally did not prescribe opioids for chronic pain.

17 468. Knowing that their products were highly addictive, ineffective and
18 unsafe for the treatment of long-term chronic pain, non-acute and non-cancer pain,
19 the RICO Marketing Defendants formed an association-in-fact enterprise and
20 engaged in a scheme to unlawfully increase their profits and sales, and grow their
21 share of the prescription painkiller market, through repeated and systematic
22 misrepresentations about the safety and efficacy of opioids for treating long-term
23 chronic pain.

24 469. The RICO Marketing Defendants formed an association-in-fact
25 enterprise consisting of “advocacy groups and professional societies” (“Front
26 Groups”) and paid “physicians affiliated with these groups” (KOLs”) in order to
27 unlawfully increase the demand for opioids. Through their personal relationships,
28 the RICO Marketing Defendants and members of the Opioid Marketing Enterprise

1 had the opportunity to form and take actions in furtherance of the Opioid
 2 Marketing Enterprise's common purpose. The RICO Marketing Defendants'
 3 substantial financial contribution to the Opioid Marketing Enterprise, and the
 4 advancement of opioids-friendly messaging, fueled the U.S. opioids epidemic.²⁰⁴

5 470. The RICO Marketing Defendants, through the Opioid Marketing
 6 Enterprise, made misleading statements and misrepresentations about opioids that
 7 downplayed the risk of addiction and exaggerated the benefits of opioid use,
 8 including: (1) downplaying the serious risk of addiction; (2) creating and
 9 promoting the concept of "pseudoaddiction" when signs of actual addiction began
 10 appearing and advocated that the signs of addiction should be treated with more
 11 opioids; (3) exaggerating the effectiveness of screening tools to prevent addiction;
 12 (4) claiming that opioid dependence and withdrawal are easily managed; (5)
 13 denying the risks of higher opioid dosages; and (6) exaggerating the effectiveness
 14 of "abuse-deterrent" opioid formulations to prevent abuse and addiction.

15 471. The RICO Marketing Defendants also falsely touted the benefits of
 16 long-term opioid use, including the supposed ability of opioids to improve
 17 function and quality of life, even though there was no scientifically reliable
 18 evidence to support the RICO Marketing Defendants' claims.

19 472. The RICO Marketing Defendants' scheme, and the common purpose
 20 of the Opioid Marketing Enterprise, has been wildly successful. Opioids are now
 21 the most prescribed class of drugs. Globally, opioid sales generated \$11 billion in
 22 revenue for drug companies in 2010 alone; sales in the United States have
 23 exceeded \$8 billion in revenue annually since 2009.²⁰⁵ In an open letter to the
 24

25 ²⁰⁴ *Fueling an Epidemic: Exposing the Financial Ties Between Opioid*
 26 *Manufacturers and Third Party Advocacy Groups*, U.S. Senate Homeland Security
 27 & Governmental Affairs Committee, Ranking Members' Office, February 12,
 2018 <https://www.hsdl.org/?abstract&did=808171> ("Fueling an Epidemic"), at 1.

28 ²⁰⁵ See Katherine Eban, *OxyContin: Purdue Pharma's Painful Medicine*, Fortune,
 Nov. 9, 2011, <http://fortune.com/2011/11/09/oxycontin-purdue-pharmas-painful-medicine/>; David Crow, *Drugmakers Hooked on \$10bn Opioid Habit*, Fin. Times,

1 nation's physicians in August 2016, the then-U.S. Surgeon General expressly
2 connected this "urgent health crisis" to "heavy marketing of opioids to doctors . . .
3 [m]any of [whom] were even taught – incorrectly – that opioids are not addictive
4 when prescribed for legitimate pain."²⁰⁶

5 473. The scheme devised and implemented by the RICO Marketing
6 Defendants amounted to a common course of conduct designed to ensure that the
7 RICO Marketing Defendants unlawfully increased their sales and profits through
8 misrepresentations about the addictive nature and effective use of the RICO
9 Marketing Defendants' drugs. As Senator McCaskill aptly recognized:

10 The opioid epidemic is the direct result of a calculated marketing and
11 sales strategy developed in the 90's, which delivered three simple
12 messages to physicians. First, that chronic pain was severely
13 undertreated in the United States. Second, that opioids were the best
tool to address that pain. And third, that opioids could treat pain
without risk of serious addiction. As it turns out, these messages were
exaggerations at best and outright lies at worst.²⁰⁷

14 **A. THE OPIOID MARKETING ENTERPRISE**

15 474. The Opioid Marketing Enterprise consists of the RICO Marketing
16 Defendants, the Front Groups, and the KOLs – each of whom is identified below:

- 17 • The RICO Defendants
 - 18 ○ Purdue
 - 19 ○ Cephalon
 - 20 ○ Janssen
 - 21 ○ Endo
- 22 • The Front Groups
 - 23 ○ American Pain Foundation ("APF")

25 Aug. 10, 2016, <https://www.ft.com/content/f6e989a8-5dac-11e6-bb77-a121aa8abd95>.

26 ²⁰⁶ Letter from Vivek H. Murthy, U.S. Surgeon General (Aug. 2016),
27 <http://turnthetiderx.org/>; *Fueling An Epidemic*, *supra* n.3, at 1.

28 ²⁰⁷ See, *LIVESTREAM: Insys Opioid Sales and Marketing Practices Roundtable*,
September 12, 2017, at 31:03-31:37,
https://www.youtube.com/watch?v=k9mrQa8_vAo (accessed on March 1, 2018).

- 1 ○ American Academy of Pain Medicine (“AAPM”)
- 2 ○ American Pain Society (“APS”)
- 3 ○ Federation of State Medical Boards (“FSMB”)
- 4 ○ U.S. Pain Foundation (“USPF”)
- 5 ○ American Geriatrics Society (“AGS”)
- 6 • The KOLs
 - 7 ○ Dr. Russell Portenoy (“Dr. Portenoy”)
 - 8 ○ Dr. Lynn Webster (“Dr. Webster”)
 - 9 ○ Dr. Perry Fine (“Dr. Fine”)
 - 10 ○ Dr. Scott M. Fishman (“Dr. Fishman”))

12 475. The Opioid Marketing Enterprise is an ongoing and continuing
13 business organization that created and maintained systematic links, interpersonal
14 relationships and engaged in a pattern of predicate acts (i.e. racketeering activity)
15 in order to further the common purpose of the enterprise: unlawfully increasing
16 profits and revenues from the continued prescription and use of opioids for long-
17 term chronic pain. Each of the individuals and entities who formed the Opioid
18 Marketing Enterprise is an entity or person within the meaning of 18 U.S.C. §
19 1961(3) and acted to enable the common purpose and fraudulent scheme of the
20 Opioid Marketing Enterprise.

21 476. In order to accomplish the common purpose, members of the Opioid
22 Marketing Enterprise repeatedly and systematically misrepresented –
23 affirmatively, and through half-truths and omissions – that opioids are non-
24 addictive and safe for the effective treatment of long-term, chronic, non-acute and
25 non-cancer pain, and for other off-label uses not approved by the FDA. The
26 Opioid Marketing Enterprise misrepresented and concealed the serious risks and
27 lack of corresponding benefits of using opioids for long-term chronic pain. By
28

1 making these misrepresentations, the Opioid Marketing Enterprise ensured that a
2 large number of opioid prescriptions would be written and filled for chronic pain.

3 477. At all relevant times, the Opioid Marketing Enterprise: (a) had an
4 existence separate and distinct from each RICO Marketing Defendant and its
5 members; (b) was separate and distinct from the pattern of racketeering in which
6 the RICO Defendants engaged; (c) was an ongoing and continuing organization
7 consisting of individuals, persons, and legal entities, including each of the RICO
8 Marketing Defendants; (d) was characterized by interpersonal relationships
9 between and among each member of the Opioid Marketing Enterprise, including
10 between the RICO Marketing Defendants and each of the Front Groups and
11 KOLs; (e) had sufficient longevity for the enterprise to pursue its purpose; and (f)
12 functioned as a continuing unit.

13 478. The persons and entities engaged in the Opioid Marketing Enterprise
14 are systematically linked through contractual relationships, financial ties, personal
15 relationships, and continuing coordination of activities, as spearheaded by the
16 RICO Marketing Defendants.

17 479. Each of the RICO Marketing Defendants, and each member of the
18 Opioid Marketing Enterprise had systematic links to and personal relationships
19 with each other through joint participation in lobbying groups, trade industry
20 organizations, contractual relationships and continuing coordination of activities.
21 Each of the RICO Marketing Defendants coordinated their marketing efforts
22 through the same KOLs and Front Groups, based on their agreement and
23 understanding that the Front Groups and KOLs were industry friendly and would
24 work together with the RICO Marketing Defendants to advance the common
25 purpose of the Opioid Marketing Enterprise.

26 **1. The RICO Defendants**

27 480. In addition to their systematic links to and personal relationships with
28 the Front Groups and KOLS, described below, the RICO Marketing Defendants

1 had systematic links to and personal relationships with each other through their
 2 participation in lobbying groups, trade industry organizations, contractual
 3 relationships and continuing coordination of activities, including but not limited
 4 to, the Pain Care Forum (“PCF”) and the Healthcare Distribution Alliance
 5 (“HDA”).

6 481. The PCF has been described as a coalition of drug makers, trade
 7 groups and dozens of non-profit organizations supported by industry funding.
 8 Plaintiffs are informed and believe that the PCF was created with the stated goal
 9 of offering a “setting where multiple organizations can share information” and
 10 “promote and support taking collaborative action regarding federal pain policy
 11 issues.” Plaintiffs are informed and believe that past APF President Will Rowe
 12 described the PCF as “a deliberate effort to positively merge the capacities of
 13 industry, professional associations, and patient organizations.”

14 482. The PCF recently became a national news story when it was
 15 discovered that lobbyists for members of the PCF, including the RICO Marketing
 16 Defendants, quietly shaped federal and state policies regarding the use of
 17 prescription opioids for more than a decade.

18 483. The Center for Public Integrity and The Associated Press obtained
 19 “internal documents shed[ding] new light on how drug makers and their allies
 20 shaped the national response to the ongoing wave of prescription opioid abuse.”²⁰⁸
 21 Specifically, PCF members spent over \$740 million lobbying in the nation’s
 22 capital and in all 50 statehouses on an array of issues, including opioid-related
 23 measures.²⁰⁹

24
 25
 26 ²⁰⁸ Matthew Perrone, Pro-Painkiller echo chamber shaped policy amid drug
 27 epidemic, The Center for Public Integrity (September 19, 2017, 12:01 a.m.),
 28 <https://www.publicintegrity.org/2016/09/19/20201/pro-painkiller-echo-chamber-shaped-policy-amid-drug-epidemic> (emphasis added).

29 ²⁰⁹ *Id.*

1 484. Not surprisingly, each of the RICO Marketing Defendants who stood
 2 to profit from lobbying in favor of prescription opioid use is a member of and/or
 3 participant in the PCF.²¹⁰ In 2012, membership and participating organizations in
 4 the PCF included the HDA (of which all the RICO Defendants are members),
 5 Endo, Purdue, Johnson & Johnson (the parent company for Janssen
 6 Pharmaceuticals), and Teva (the parent company of Cephalon).²¹¹ Each of the
 7 RICO Marketing Defendants worked together through the PCF to advance the
 8 interests of the Opioid Marketing Enterprise. But, the RICO Marketing
 9 Defendants were not alone, many of the RICO Marketing Defendants' Front
 10 Groups were also members of the PCF, including the American Academy of Pain
 11 Management, the American Pain Foundation, and the American Pain Society.
 12 Upon information and belief, the RICO Marketing Defendants' KOLs were also
 13 members of and participated in the PCF.

14 485. Through the Pain Care Forum, the RICO Marketing Defendants met
 15 regularly and in person to form and take action to further the common purpose of
 16 the Opioid Marketing Enterprise and shape the national response to the ongoing
 17 prescription opioid epidemic.

18 486. Through the HDA – or Healthcare Distribution Alliance – the RICO
 19 Marketing Defendants “strengthen[ed] . . . alliances”²¹² and took actions to further
 20 the common purpose of the Opioid Marketing Enterprise.

21 487. Beyond strengthening alliances, the benefits of HDA membership
 22 included the ability to, among other things, “network one on one with

24 ²¹⁰ PAIN CARE FORUM 2012 Meetings Schedule, (last updated December 2011),
 25 <https://assets.documentcloud.org/documents/3108982/PAIN-CARE-FORUM-Meetings-Schedule-amp.pdf> (last visited March 8, 2018).

26 ²¹¹ *Id.* Upon information and belief, Mallinckrodt became an active member of the
 27 PCF sometime after 2012.

28 ²¹² Manufacturer Membership Benefits, Healthcare Distribution Alliance, (accessed on September 14, 2017),
<https://www.healthcaredistribution.org/~media/pdfs/membership/manufacturer-membership-benefits.ashx?la=en> (emphasis added).

1 manufacturer executives at HDA’s members-only Business and Leadership
 2 Conference,” “participate on HDA committees, task forces and working groups
 3 with peers and trading partners,” and “make connections.”²¹³ Clearly,
 4 membership in the HDA was an opportunity to create interpersonal and ongoing
 5 organizational relationships and “alliances” between the RICO Marketing
 6 Defendants.

7 488. The closed meetings of the HDA’s councils, committees, task forces
 8 and working groups provided the RICO Marketing Defendants with the
 9 opportunity to work closely together, confidentially, to develop and further the
 10 common purpose and interests of the Opioid Marketing Enterprise.

11 489. The HDA also offered multiple conferences, including annual
 12 business and leadership conferences through which the RICO Marketing
 13 Defendants had an opportunity to “bring together high-level executives, thought
 14 leaders and influential managers . . . to hold strategic business discussions on the
 15 most pressing industry issues.”²¹⁴ The HDA and its conferences were significant
 16 opportunities for the RICO Marketing Defendants to interact at the executive level
 17 and form and take actions in furtherance of the common purpose of the Opioid
 18 Marketing Enterprise. It is clear that the RICO Marketing Defendants embraced
 19 this opportunity by attending and sponsoring these events.²¹⁵

20 490. The systematic contacts and personal relationships developed by the
 21 RICO Marketing Defendants through the PCF and the HDA furthered the
 22 common purpose of the Opioid Marketing Enterprise because it allowed the RICO
 23

24 ²¹³ *Id.*

25 ²¹⁴ Business and Leadership Conference – Information for Manufacturers,
 26 Healthcare Distribution
 27 Alliance<https://www.healthcaredistribution.org/events/2015-business-and-leadership-conference/blc-for-manufacturers> (last accessed on September 14, 2017).

28 ²¹⁵ 2015 Distribution Management Conference and Expo, Healthcare Distribution
 29 Alliance, <https://www.healthcaredistribution.org/events/2015-distribution-management-conference> (last accessed on September 14, 2017).

1 Marketing Defendants to coordinate the conduct of the Opioid Marketing
2 Enterprise by, including but not limited to, coordinating their interaction and
3 development of relationships with the Front Groups and KOLs.

4 **2. The Front Groups**

5 491. Each of the RICO Marketing Defendants had systematic links to and
6 personal relationships with Front Groups that operated as part of the Opioid
7 Marketing Enterprise to further the common purpose of unlawfully increasing
8 sales by misrepresenting the non-addictive and effective use of opioids for the
9 treatment of long-term chronic pain. As recently reported by the U.S. Senate in
10 “*Fueling an Epidemic*”:

11 The fact that these same manufacturers provided millions of dollars to
12 the groups described below suggests, at the very least, a direct link
13 between corporate donations and the advancement of opioids-friendly
14 messaging. By aligning medical culture with industry goals in this
way, many of the groups described in this report may have played a
significant role in creating the necessary conditions for the U.S.
opioids epidemic.²¹⁶

15 492. “Patient advocacy organizations and professional societies like the
16 Front Groups ‘play a significant role in shaping health policy debates, setting
17 national guidelines for patient treatment, raising disease awareness, and educating
18 the public.’²¹⁷ ‘Even small organizations—with ‘their large numbers and
19 credibility with policymakers and the public’—have ‘extensive influence in
20 specific disease areas.’ Larger organizations with extensive funding and outreach
21 capabilities ‘likely have a substantial effect on policies relevant to their industry
22 sponsors.’’²¹⁸ Indeed, as reflected below, the U.S. Senate’s report found that the
23 RICO Marketing Defendants made nearly \$9 million worth of contributions to
24 various Front Groups, including members of the Opioid Marketing Enterprise.²¹⁹

25
26

²¹⁶ *Fueling an Epidemic*, at p. 1.

27 ²¹⁷ *Id.* at p. 2

28 ²¹⁸ *Id.*

²¹⁹ *Id.* at p. 3.

1 FIGURE 1: Manufacturer Payments to Selected Groups, 2012-2017
2

	Purdue ²²	Janssen ²³	Depomed	Insys	Mylan	Total
Academy of Integrative Pain Management	\$1,091,024.86	\$128,000.00	\$43,491.95	\$3,050.00 ²⁴	\$0.00	\$1,265,566.81
American Academy of Pain Medicine	\$725,584.95	\$83,975.00	\$332,100.00	\$57,750.00	\$0.00	\$1,199,409.95
AAPM Foundation	\$0.00	\$0.00	\$304,605.00	\$0.00	\$0.00	\$304,605.00
ACS Cancer Action Network	\$168,500.00 ²⁵	\$0.00	\$0.00	\$0.00	\$0.00	\$168,500.00
American Chronic Pain Association	\$312,470.00	\$50,000.00	\$54,670.00	\$0.00	\$0.00	\$417,140.00
American Geriatrics Society	\$11,785.00 ²⁶	\$0.00	\$0.00	\$0.00	\$0.00	\$11,785.00
American Pain Foundation	\$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$25,000.00
American Pain Society	\$542,259.52	\$88,500.00	\$288,750.00	\$22,965.00	\$20,250.00	\$962,724.52
American Society of Pain Educators	\$30,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$30,000.00
American Society of Pain Management Nursing	\$242,535.00	\$55,177.85 ²⁷	\$25,500.00 ²⁸	\$0.00	\$0.00	\$323,212.85
The Center for Practical Bioethics	\$145,095.00	\$18,000.00	\$0.00	\$0.00	\$0.00	\$163,095.00
The National Pain Foundation²⁹	\$0.00	\$0.00	\$0.00	\$562,500.00	\$0.00	\$562,500.00
U.S. Pain Foundation	\$359,300.00	\$41,500.00	\$22,000.00	\$2,500,000.00 ³⁰	\$0.00	\$2,922,800.00
Washington Legal Foundation	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$500,000.00
	\$4,153,554.33	\$465,152.85	\$1,071,116.95	\$3,146,265.00	\$20,250.00	\$8,856,339.13

23 493. The Front Groups included in the Opioid Marketing Enterprise “have
 24 promoted messages and policies favorable to opioid use while receiving millions
 25 of dollars in payments from opioid manufacturers. Through criticism of
 26 government prescribing guidelines, minimization of opioid addiction risk, and
 27 other efforts, ostensibly neutral advocacy organizations have often supported
 28

1 industry interests at the expense of their own constituencies.²²⁰ And, as reflected
 2 below, many of the RICO Marketing Defendants' Front Groups received the
 3 largest contributions:

4 FIGURE 5: Group Rankings by Manufacturer Payments, 2012-2017

U.S. Pain Foundation	\$2,922,800.00
Academy of Integrative Pain Management	\$1,265,566.81
American Academy of Pain Medicine	\$1,199,409.95
American Pain Society	\$962,724.52
The National Pain Foundation	\$562,500.00
Washington Legal Foundation	\$500,000.00
American Chronic Pain Association	\$417,140.00
American Society of Pain Management Nursing	\$323,212.85
AAPM Foundation	\$304,605.00
ACS Cancer Action Network	\$168,500.00
The Center for Practical Bioethics	\$163,095.00
American Society of Pain Educators	\$30,000.00
American Pain Foundation	\$25,000.00
American Geriatrics Society	\$11,785.00

15 494. But, the RICO Marketing Defendants connection with and control
 16 over the Front Groups did not end with financial contributions. Rather, the RICO
 17 Marketing Defendants made substantial contributions to physicians affiliated with
 18 the Front Groups totaling more than \$1.6 million.²²¹ Moreover, the RICO
 19 Marketing Defendants "made substantial payments to individual group executives,
 20 staff members, board members, and advisory board members" affiliated with the
 21 Front Groups subject to the Senate Committee's study.²²²

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27 ²²⁰ *Id.* at p. 3.

28 ²²¹ *Id.* at p. 3.

²²² *Id.* at p. 10.

1 495. As described in more detail below²²³, the RICO Marketing
 2 Defendants “amplified or issued messages that reinforce industry efforts to
 3 promote opioid prescription and use, including guidelines and policies minimizing
 4 the risk of addiction and promoting opioids for chronic pain.”²²⁴ They also
 5 “lobbied to change laws directed at curbing opioid use, strongly criticized
 6 landmark CDC guidelines on opioid prescribing, and challenged legal efforts to
 7 hold physicians and industry executives responsible for overprescription and
 8 misbranding.”²²⁵

9
 10 FIGURE 7: Purdue, Janssen, Insys, Depomed, and Mylan Payments to Groups and Group-
 Affiliated Individuals, 2012-Present⁴¹

	Payments to Group	Payments to Group- Affiliated Individuals	Total
U.S. Pain Foundation	\$2,922,800.00	\$126.20	\$2,922,926.20
The National Pain Foundation	\$562,500.00	\$839,848.84	\$1,402,348.84
Academy of Integrative Pain Management	\$1,265,566.81	\$30,223.42	\$1,295,790.23
American Academy of Pain Medicine	\$1,199,409.95	\$16,462.42	\$1,215,872.37
American Pain Society	\$962,724.52	\$95,474.56	\$1,058,199.08
AAPM Foundation	\$304,605.00	\$314,175.58	\$618,780.58
Washington Legal Foundation	\$500,000.00	N/A	\$500,000.00
American Chronic Pain Association	\$417,140.00	\$31,265.87	\$448,405.87
American Society of Pain Management Nursing	\$323,212.85	N/A	\$323,212.85
American Society of Pain Educators	\$30,000.00	\$280,765.92	\$310,765.92
The Center for Practical Bioethics	\$163,095.00	\$7,116.86	\$170,211.86
ACS Cancer Action Network	\$168,500.00	N/A	\$168,500.00
American Pain Foundation	\$25,000.00	N/A	\$25,000.00
American Geriatrics Society	\$11,785.00	\$194.13	\$11,979.13
Total	\$8,856,339.13	\$1,615,653.80	\$10,471,992.93

25
 26 ²²³ The activities that the Front Groups engaged in, and the misrepresentations that
 they made, in furtherance of the common purpose of the Opioid Marketing
 Enterprise are alleged more fully below, under the heading “Conduct of the Opioid
 Marketing Enterprise.”

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 28 ²²⁴ *Id.* at 12-15.

225 *Id.* at 12.

1 496. The systematic contacts and interpersonal relationships of the RICO
2 Marketing Defendants, and the Front Groups are further described below:

3 497. The American Pain Foundation (“APF”) – The American Pain
4 Foundation was the most prominent member of the RICO Defendants’ Front
5 Groups and was funded almost exclusively by the RICO Marketing Defendants.
6 Plaintiffs are informed and believe that APF received more than \$10 million in
7 funding from the RICO Marketing Defendants between 2007 and the close of its
8 business in May 2012. The APF had multiple contacts and personal relationships
9 with the RICO Marketing Defendants through its many publishing and
10 educational programs, funded and supported by the RICO Marketing Defendants.
11 Plaintiffs are further informed and believe that between 2009 and 2010, APF
12 received more than eighty percent (80%) of its operating budget from
13 pharmaceutical industry sources. Including industry grants for specific projects,
14 APF received about \$2.3 million from industry sources out of total income of
15 about \$2.85 million in 2009; its budget for 2010 projected receipts of roughly \$2.9
16 million from drug companies, out of total income of about \$3.5 million. By 2011,
17 upon information and belief, APF was entirely dependent on incoming grants
18 from Defendants Purdue, Cephalon, Endo, and others.

19 498. On information and belief, APF was often called upon to provide
20 “patient representatives” for the RICO Marketing Defendants’ promotional
21 activities, including for Purdue’s “Partners Against Pain” and Janssen’s “Let’s
22 Talk Pain.” APF functioned largely as an advocate for the interests of the RICO
23 Marketing Defendants, not patients. Indeed, upon information and belief, as early
24 as 2001, Purdue told APF that the basis of a grant was Purdue’s desire to
25 “strategically align its investments in nonprofit organizations that share [its]
26 business interests.”

27 499. APF is also credited with creating the PCF in 2004. Plaintiffs are
28 informed and believe that the PCF was created with the stated goal of offering a

1 “setting where multiple organizations can share information” and “promote and
 2 support taking collaborative action regarding federal pain policy issues.”
 3 Plaintiffs are informed and believe that past APF President Will Rowe described
 4 the PCF as “a deliberate effort to positively merge the capacities of industry,
 5 professional associations, and patient organizations.”

6 500. Upon information and belief, representatives of the RICO Marketing
 7 Defendants, often at informal meetings at conferences, suggested activities and
 8 publications for APF to pursue. APF then submitted grant proposals seeking to
 9 fund these activities and publications, knowing that drug companies would
 10 support projects conceived as a result of these communications.

11 501. Furthermore, APF’s Board of Directors was largely comprised of
 12 doctors who were on Defendants’ payrolls, either as consultants or speakers at
 13 medical events.²²⁶ As described below, many of the KOLs involved in the Opioid
 14 Marketing Enterprise also served in leadership positions within the APF.

15 502. In December 2011, a ProPublica investigation found that in 2010,
 16 nearly 90% of APF’s funding came from the drug and medical device community,
 17 including RICO Marketing Defendants.²²⁷ More specifically, APF received
 18 approximately \$2.3 million from industry sources out of total income of \$2.85
 19 million in 2009. It’s budget for 2010 projected receipt of approximately \$2.9
 20 million from drug companies, out of total income of approximately \$3.5 million.
 21 In May 2012, the U.S. Senate Finance Committee began looking into APF to
 22 determine the links, financial and otherwise, between the organization and the
 23 manufacturers of opioid painkillers. Within days of being targeted by the Senate
 24

25 ²²⁶ Charles Ornstein and Tracy Weber, *The Champion of Painkillers*, ProPublica
 26 (Dec. 23, 2011), <https://www.propublica.org/article/the-champion-of-painkillers>.

27 ²²⁷ Charles Ornstein & Tracy Weber, *Patient advocacy group funded by success of*
 28 *painkiller drugs, probe finds*, Wash. Post (Dec. 23, 2011),
https://www.washingtonpost.com/national/healthscience/patient-advocacy-group-funded-by-success-of-painkiller-drugs-probefinds/2011/12/20/gIQAvgczDP_story.html?utm_term=.22049984c606.

1 investigation, APF's Board voted to dissolve the organization "due to irreparable
 2 economic circumstances." APF "cease[d] to exist, effective immediately."²²⁸

3 503. The American Academy of Pain Medicine ("AAPM") – The AAPM
 4 was another Front Group that had systematic ties and personal relationships with
 5 the RICO Defendants. AAPM received over \$2.2 million in funding since 2009
 6 from opioid manufacturers. AAPM maintained a corporate relations council,
 7 whose members paid \$25,000 per year (on top of other funding) to participate.
 8 The benefits included allowing members to present educational programs at off-
 9 site dinner symposia in connection with AAPM's marquee event – its annual
 10 meeting held in Palm Springs, California, or other resort locations. AAPM
 11 describes the annual event as an "exclusive venue" for offering education
 12 programs to doctors. Membership in the corporate relations council also allowed
 13 drug company executives and marketing staff to meet with AAPM executive
 14 committee members in small settings. The RICO Marketing Defendants were all
 15 members of the council and presented deceptive programs to doctors who
 16 attended this annual event.²²⁹

17 504. The RICO Marketing Defendants internally viewed AAPM as
 18 "industry friendly," with RICO Defendants' advisors and speakers among its
 19 active members. The RICO Marketing Defendants attended AAPM conferences,
 20 funded its CMEs and satellite symposia, and distributed its publications. AAPM
 21 conferences heavily emphasized sessions on opioids. AAPM presidents have
 22 included top industry-supported KOLs like Perry Fine and Lynn Webster.

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 24
 25 228 Charles Ornstein & Tracy Weber, *Senate Panel Investigates Drug Companies' Ties to Pain Groups*, Wash. Post, May 8, 2012,
 26 https://www.washingtonpost.com/national/health-science/senate-panel-investigates-drug-companies-ties-to-pain-groups/2012/05/08/gIQA2X4qBU_story.html.

27 229 The American Academy of Pain Medicine, Pain Medicine DC The Governing Voices of Pain: Medicine, Science, and Government, March 24-27, 2011,
 28 <http://www.painmed.org/files/2011-annual-meeting-program-book.pdf>.

1 505. Upon information and belief, representatives of the RICO Marketing
2 Defendants, often at informal meetings at conferences, suggested activities and
3 publications for AAPM to pursue. AAPM then submitted grant proposals seeking
4 to fund these activities and publications, knowing that drug companies would
5 support projects conceived as a result of these communications.

6 506. Plaintiffs are informed and believe that members of AAPM's Board
7 of Directors were doctors who were on the RICO Marketing Defendants' payrolls,
8 either as consultants or speakers at medical events. As described below, many of
9 the KOLs involved in the Opioid Marketing Enterprise also served in leadership
10 positions within the AAPM.

11 507. The American Pain Society ("APS") – The APS was another Front
12 Group with systematic connections and interpersonal relationships with the RICO
13 Marketing Defendants. APS was one of the Front Groups investigated by
14 Senators Grassley and Baucus, as evidenced by their May 8, 2012 letter arising
15 out of their investigation of "extensive ties between companies that manufacture
16 and market opioids and non-profit organizations" that "helped created a body of
17 dubious information favoring opioids."²³⁰

18 508. Upon information and belief, representatives of the RICO Marketing
19 Defendants, often at informal meetings at conferences, suggested activities and
20 publications for APS to pursue. APS then submitted grant proposals seeking to
21 fund these activities and publications, knowing that drug companies would
22 support projects conceived as a result of these communications.

23 509. Plaintiffs are informed and believe that members of APS's Board of
24 Directors were doctors who were on the RICO Marketing Defendants' payrolls,

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²³⁰ Letter from U.S. Senators Charles E. Grassley and Max Baucus to Catherine
27 Underwood, Executive Director (May 8, 2012), American Pain Society,
28 https://www.finance.senate.gov/imo/media/doc/05092012%20Baucus%20Grassley%
%20Opioid%20Investigation%20Letter%20to%20American%20Pain%20Society.pdf.

1 either as consultants or speakers at medical events. As described below, many of
 2 the KOLs involved in the Opioid Marketing Enterprise also served in leadership
 3 positions within the APS.

4 510. The Federation of State Medical Boards (“FSMB”) – FSMB was
 5 another Front Group with systematic connections and interpersonal relationships
 6 with the RICO Marketing Defendants. In addition to the contributions reported in
 7 *Fueling an Epidemic*, a June 8, 2012 letter submitted by FSMB to the Senate
 8 Finance Committee disclosed substantial payments from the RICO Marketing
 9 Defendants beginning in 1997 and continuing through 2012.²³¹ Not surprisingly,
 10 the FSMB was another one of the Front Groups investigated by Senators Grassley
 11 and Baucus, as evidenced by their May 8, 2012 letter arising out of their
 12 investigation of “extensive ties between companies that manufacture and market
 13 opioids and non-profit organizations” that “helped created a body of dubious
 14 information favoring opioids.”²³²

15 511. The U.S. Pain Foundation (“USPF”) – The USPF was another Front
 16 Group with systematic connections and interpersonal relationships with the RICO
 17 Marketing Defendants. The USPF was one of the largest recipients of
 18 contributions from the RICO Marketing Defendants, collection nearly \$3 million
 19 in payments between 2012 and 2015 alone.²³³ The USPF was also a critical
 20 component of the Opioid Marketing Enterprise’s lobbying efforts to reduce the
 21 limits on over-prescription. The U.S. Pain Foundation advertises its ties to the
 22 RICO Marketing Defendants, listing opioid manufacturers like Pfizer, Teva,
 23

24 231 June 8, 2012 Letter from Federation of State Medical Boards to U.S. Senators
 25 Max Baucus and Charles Grassley.

26 232 Letter from U.S. Senators Charles E. Grassley and Max Baucus to Catherine
 27 Underwood, Executive Director (May 8, 2012), American Pain Society,
<https://www.finance.senate.gov/imo/media/doc/05092012%20Baucus%20Grassley%20Opioid%20Investigation%20Letter%20to%20American%20Pain%20Society.pdf>.

28 233 *Fueling an Epidemic*, at p. 4.

1 Depomed, Endo, Purdue, McNeil (i.e. Janssen), and Mallinckrodt as “Platinum,”
 2 “Gold,” and “Basic” corporate members.²³⁴ Industry Front Groups like the
 3 American Academy of Pain Management, the American Academy of Pain
 4 Medicine, the American Pain Society, and PhRMA are also members of varying
 5 levels in the USPF.

6 512. American Geriatrics Society (“AGS”) – The AGS was another Front
 7 Group with systematic connections and interpersonal relationships with the RICO
 8 Defendants. The AGS was a large recipient of contributions from the RICO
 9 Marketing Defendants, including Endo, Purdue and Janssen. AGS contracted
 10 with the RICO Marketing Defendants to disseminate guidelines regarding the use
 11 of opioids for chronic pain in 2002 (*The Management of Persistent Pain in Older*
 12 *Persons*, hereinafter “2002 AGS Guidelines”) and 2009 (*Pharmacological*
 13 *Management of Persistent Pain in Older Persons*,²³⁵ hereinafter “2009 AGS
 14 Guidelines”). According to news reports, AGS has received at least \$344,000 in
 15 funding from opioid manufacturers since 2009.²³⁶ AGS’s complicity in the
 16 common purpose of the Opioid Marketing Enterprise is evidenced by the fact that
 17 AGS internal discussions in August 2009 reveal that it did not want to receive-up
 18 front funding from drug companies, which would suggest drug company
 19 influence, but would instead accept commercial support to disseminate pro-opioid
 20 publications.

21 513. Upon information and belief, representatives of the RICO Marketing
 22 Defendants, often at informal meetings at conferences, suggested activities,
 23

24 ²³⁴ *Id.* at 12; Transparency, U.S. Pain Foundation,
 25 <https://uspainfoundation.org/transparency/> (last accessed on March 9, 2018).

26 ²³⁵ *Pharmacological Management of Persistent Pain in Older Persons*, 57 J. Am.
 27 Geriatrics Soc'y 1331, 1339, 1342 (2009), available at
<https://www.nhqualitycampaign.org/files/AmericanGeriatricSociety-PainGuidelines2009.pdf> (last accessed on March 9, 2018).

28 ²³⁶ John Fauber & Ellen Gabler, *Narcotic Painkiller Use Booming Among Elderly*,
 Milwaukee J. Sentinel, May 30, 2012.

1 lobbying efforts and publications for AGS to pursue. AGS then submitted grant
2 proposals seeking to fund these activities and publications, knowing that drug
3 companies would support projects conceived as a result of these communications.

4 514. Plaintiffs are informed and believe that members of AGS Board of
5 Directors were doctors who were on the RICO Marketing Defendants' payrolls,
6 either as consultants or speakers at medical events. As described below, many of
7 the KOLs involved in the Opioid Marketing Enterprise also served in leadership
8 positions within the AGS.

9 515. There was regular communication between each of the RICO
10 Marketing Defendants, Front Groups and KOLs, in which information was shared,
11 misrepresentations were coordinated, and payments were exchanged. Typically,
12 the coordination, communication and payment occurred, and continues to occur,
13 through the use of the wires and mail in which the RICO Markets Defendants,
14 Front Groups, and KOLs share information necessary to overcome objections and
15 resistance to the use of opioids for chronic pain. The RICO Marketing
16 Defendants, Front Groups and KOLs functioned as a continuing unit for the
17 purpose of implementing the Opioid Marketing Enterprise's scheme and common
18 purpose, and each agreed to take actions to hide the scheme and continue its
19 existence.

20 516. At all relevant times, the Front Groups were aware of the RICO
21 Marketing Defendants' conduct, were knowing and willing participants in that
22 conduct, and reaped benefits from that conduct. Each Front Group also knew, but
23 did not disclose, that the other Front Groups were engaged in the same scheme, to
24 the detriment of consumers, prescribers, and The County. But for the Opioid
25 Marketing Enterprise's unlawful fraud, the Front Groups would have had
26 incentive to disclose the deceit by the RICO Marketing Defendants and the Opioid
27 Marketing Enterprise to their members and constituents. By failing to disclose
28

1 this information, Front Groups perpetuated the Opioid Marketing Enterprise's
2 scheme and common purpose, and reaped substantial benefits.

3 **3. The KOLs**

4 517. Similarly, each of the RICO Marketing Defendants financed,
5 supported, utilized and relied on the same KOLs by paying, financing, supporting,
6 managing, directing, or overseeing, and/or relying on their work. On Information
7 and belief, the RICO Marketing Defendants cultivated this small circle of doctors
8 solely because they favored the aggressive treatment of chronic pain with opioids.

9 518. The RICO Marketing Defendants and the Opioid Marketing
10 Enterprise relied on their KOLs to serve as part of their speakers bureaus and to
11 attend programs with speakers bureaus. The RICO Marketing Defendants graded
12 their KOLs on performance, post-program sales, and product usage. Furthermore,
13 the RICO Marketing Defendants expected their KOLs to stay "on message," and
14 obtained agreements from them, in writing, that "all slides must be presented in
15 their entirety and without alterations . . . and in sequence."

16 519. The RICO Marketing Defendants' KOLs have been at the center of
17 the Opioid Marketing Enterprise's marketing efforts, presenting the false
18 appearance of unbiased and reliable medical research supporting the broad use of
19 opioid therapy for chronic pain. As described in more detail below, the KOLs
20 have written, consulted, edited, and lent their names to books and articles, and
21 given speeches, and CMEs supporting chronic opioid therapy. They have served
22 on committees that developed treatment guidelines that strongly encourage the use
23 of opioids to treat chronic pain (even while acknowledging the lack of evidence in
24 support of that position) and on the boards of the pro-opioid Front Groups
25 identified above.

26 520. The RICO Marketing Defendants and KOLS all had systematic
27 connections and interpersonal relationships, as described below, through the
28 KOLs receipt of payments from the RICO Marketing Defendants and Front

1 Groups, the KOLs' authoring, publishing, speaking, and educating on behalf of
 2 the RICO Marketing Defendants, and their leadership roles and participation in
 3 the activities of the Front Groups, which were in turn financed by the RICO
 4 Marketing Defendants.

5 521. The systematic contacts and interpersonal relationships of the KOLs
 6 with the RICO Marketing Defendants and Front Groups are described below:

7 522. Dr. Russell Portenoy – Dr. Portenoy was one of the main KOLs that
 8 the RICO Marketing Defendants identified and promoted to further the common
 9 purpose of the Opioid Marketing Enterprise. Dr. Portenoy received research
 10 support, consulting fees, and honoraria from the RICO Defendants, and was a paid
 11 consultant to various RICO Marketing Defendants. Dr. Portenoy was
 12 instrumental in opening the door for the regular use of opioids to treat chronic
 13 pain. Dr. Portenoy is credited as one of the authors on a primary pillar of the
 14 RICO Marketing Defendants' misrepresentation regarding the risks and benefits
 15 of opioid use.²³⁷ Dr. Portenoy had financial relationships with at least a dozen
 16 pharmaceutical companies, most of which produced prescription opioids.²³⁸

17
 18
 19 ²³⁷ In 1986, the medical journal Pain, which would eventually become the official
 20 journal of the American Pain Society ("APS"), published an article by Portenoy
 21 and Foley summarizing the results of a "study" of 38 chronic non-cancer pain
 22 patients who had been treated with opioid painkillers. Portenoy and Foley
 23 concluded that, for non-cancer pain, opioids "can be safely and effectively
 24 prescribed to selected patients with relatively little risk of producing the
 25 maladaptive behaviors which define opioid abuse." However, their study was
 26 neither scientific nor did it meet the rigorous standards commonly used to evaluate
 27 the validity and strength of such studies in the medical community. For instance,
 28 there was no placebo control group, and the results were retroactive (asking
 patients to describe prior experiences with opioid treatment rather than less biased,
 in-the-moment reports). The authors themselves advised caution, stating that the
 drugs should be used as an "alternative therapy" and recognizing that longer term
 studies of patients on opioids would have to be performed. None were. See Russell
 K. Portenoy & Kathleen M. Foley, *Chronic use of opioid analgesics in non-*
malignant pain: report of 38 cases, 25(2) Pain 171-86 (May 1986).

238 Anna Lembke, Drug Dealer, MD: How Doctors Were Duped, Patients Got
 Hooked, and Why It's So Hard to Stop, (Johns Hopkins University Press 2016), at
 59 (citing Barry Meier, Pain Killer: A "Wonder" Drug's Trail of Addiction and
 Death (St. Martin's Press, 1st Ed 2003).

1 523. In exchange for the payments he received from the RICO Marketing
 2 Defendants, Dr. Portenoy is credited as one of the authors on a primary pillar of
 3 the RICO Marketing Defendants' misrepresentation regarding the risks and
 4 benefits of opioids.²³⁹ Dr. Portenoy, published, spoke, consulted, appeared in
 5 advertisements and on television broadcasts, and traveled the country to travel the
 6 country to promote more liberal prescribing for many types of pain and conduct
 7 continuing medical education ("CME") seminars sponsored by the RICO
 8 Marketing Defendants and Front Groups.

9 524. Dr. Portenoy was also a critical component of the RICO Marketing
 10 Defendants' control over their Front Groups, and the Front Groups support of the
 11 Opioid Marketing Enterprise's common purpose. Specifically, Dr. Portenoy sat as
 12 a Director on the board of the APF. He was also the President of the APS.

13 525. In a 2011 interview released by Physicians for Responsible Opioid
 14 Prescribing, Dr. Portenoy admitted that his earlier work relied on evidence that
 15 was not "real" and left real evidence behind, all in furtherance of the Opioid
 16 Marketing Enterprise's common purpose:

17 I gave so many lectures to primary care audiences in which the Porter
 18 and Jick article was just one piece of data that I would then cite, and I
 19 would cite six, seven, maybe ten different avenues of thought or
 20 avenues of evidence, none of which represented real evidence, and yet
 what I was trying to do was to create a narrative so that the primary

21 ²³⁹ In 1986, the medical journal Pain, which would eventually become the official
 22 journal of the American Pain Society ("APS"), published an article by Portenoy
 23 and Foley summarizing the results of a "study" of 38 chronic non-cancer pain
 24 patients who had been treated with opioid painkillers. Portenoy and Foley
 25 concluded that, for non-cancer pain, opioids "can be safely and effectively
 26 prescribed to selected patients with relatively little risk of producing the
 27 maladaptive behaviors which define opioid abuse." However, their study was
 28 neither scientific nor did it meet the rigorous standards commonly used to evaluate
 the validity and strength of such studies in the medical community. For instance,
 there was no placebo control group, and the results were retroactive (asking
 patients to describe prior experiences with opioid treatment rather than less biased,
 in-the-moment reports). The authors themselves advised caution, stating that the
 drugs should be used as an "alternative therapy" and recognizing that longer term
 studies of patients on opioids would have to be performed. None were. See Russell
 K. Portenoy & Kathleen M. Foley, *Chronic use of opioid analgesics in non-*
malignant pain: report of 38 cases, 25(2) Pain 171-86 (May 1986).

1 care audience would look at this information in [total] and feel more
 2 comfortable about opioids in a way they hadn't before. In essence this
 3 was education to destigmatize [opioids], and because the primary goal
 4 was to destigmatize, we often left evidence behind.²⁴⁰

5 526. Dr. Lynn Webster – Dr. Webster was a critical component of the
 6 Opioid Marketing Enterprise, including advocating the RICO Marketing
 7 Defendants' fraudulent messages regarding prescription opioids and had
 8 systematic contacts and personal relationships with the RICO Marketing
 9 Defendants and the Front Groups.

10 527. Dr. Webster was the co-founder and Chief Medical Director of an
 11 otherwise unknown pain clinic in Salt Lake City, Utah (Lifetree Clinical
 12 Research), who went on to become one of the RICO Marketing Defendants' main
 13 KOLs. Dr. Webster was the President of American Academy of Pain Medicine
 14 ("AAPM") in 2013. He is a Senior Editor of Pain Medicine, the same journal that
 15 published Endo special advertising supplements touting Opana ER. Dr. Webster
 16 was the author of numerous CMEs sponsored by Cephalon, Endo, and Purdue. At
 17 the same time, Dr. Webster was receiving significant funding from the RICO
 18 Marketing Defendants (including nearly \$2 million from Cephalon alone).

19 528. During a portion of his time as a KOL, Dr. Webster was under
 20 investigation for overprescribing by the U.S. Department of Justice's Drug
 21 Enforcement Agency, which raided his clinic in 2010. Although the investigation
 22 was closed without charges in 2014, more than twenty (20) of Dr. Webster's
 23 former patients at the Lifetree Clinic have died of opioid overdoses.

24 529. Dr. Webster created and promoted the Opioid Risk Tool, a five
 25 question, one-minute screening tool relying on patient self-reports that purportedly
 26 allows doctors to manage the risk that their patients will become addicted to or
 27 abuse opioids. The claimed ability to pre-sort patients likely to become addicted is

28 ²⁴⁰ Andrew Kolodny, *Opioids for Chronic Pain: Addiction is NOT Rare*, YouTube
 29 (Oct. 30, 2011),
<https://www.youtube.com/watch?v=DgyuBWN9D4w&feature=youtu.be>.

1 an important tool in giving doctors confidence to prescribe opioids long-term, and,
 2 for this reason, references to screening appear in various industry-supported
 3 guidelines. Versions of Dr. Webster's Opioid Risk Tool appear on, or are linked
 4 to, websites run by Endo, Janssen, and Purdue.

5 530. Dr. Webster is also credited as one of the leading proponents of
 6 "pseudoaddiction" that the RICO Marketing Defendants, Front Groups and KOLs
 7 disseminated as part of the common purpose of the Opioid Marketing Enterprise.

8 531. Plaintiff The County is informed and believes that in exchange for
 9 the payments he received from the RICO Marketing Defendants, Dr. Webster
 10 published, spoke, consulted, appeared in advertisements and on television
 11 broadcasts, and traveled the country to promote more liberal prescribing of
 12 opioids for many types of pain and conduct CME seminars sponsored by the
 13 RICO Marketing Defendants and Front Groups.

14 532. Like Dr. Portenoy, Dr. Webster later reversed his opinion and
 15 disavowed his previous work on and opinions regarding pseudoaddiction.
 16 Specifically, Dr. Webster acknowledged that "[pseudoaddiction] obviously
 17 became too much of an excuse to give patients more medication."²⁴¹

18 533. Dr. Perry Fine – Dr. Webster was a critical component of the Opioid
 19 Marketing Enterprise, including advocating the RICO Marketing Defendants'
 20 fraudulent messages regarding prescription opioids and had systematic contacts
 21 and personal relationships with the RICO Marketing Defendants and the Front
 22 Groups.

23 534. Dr. Fine was originally a doctor practicing in Utah, who received
 24 support from the RICO Marketing Defendants, including Janssen, Cephalon,
 25 Endo, and Purdue. Dr. Fine's ties to the RICO Marketing Defendants have been
 26

27 241 John Fauber, *Painkiller Boom Fueled by Networking*, Milwaukee Wisc. J.
 28 Sentinel, Feb. 18, 2012,
<http://archive.jsonline.com/watchdog/watchdogreports/painkiller-boom-fueled-by-networking-dp3p2rn-139609053.html>.

1 well documented.²⁴² He has authored articles and testified in court cases and
 2 before state and federal committees, and he served as president of the AAPM, and
 3 argued against legislation restricting high-dose opioid prescription for non-cancer
 4 patients. Multiple videos featured Fine delivering educational talks about
 5 prescription opioids. He even testified in a trial that the 1,500 pills a month
 6 prescribed to celebrity Anna Nicole Smith for pain did not make her an addict
 7 before her death.²⁴³ He has also acknowledged having failed to disclose numerous
 8 conflicts of interest.

9 535. Dr. Fine was also a critical component of the RICO Marketing
 10 Defendants' control over their Front Groups, and the Front Groups support of the
 11 Opioid Marketing Enterprise's common purpose. Specifically, Dr. Fine served on
 12 the Board of Directors of APF and served as the President of the AAPM in 2011.

13 536. Plaintiff The County is informed and believes that in exchange for
 14 the payments he received from the RICO Marketing Defendants, Dr. Fine
 15 published, spoke, consulted, appeared in advertisements and on television
 16 broadcasts, and traveled the country to promote more liberal prescribing of
 17 opioids for many types of pain and conduct CME seminars sponsored by the
 18 RICO Marketing Defendants and Front Groups.

19 537. Dr. Scott M. Fishman – Dr. Fishman was a critical component of the
 20 Opioid Marketing Enterprise, including advocating the RICO Marketing
 21 Defendants' fraudulent messages regarding prescription opioids and had
 22
 23
 24

25 ²⁴² Tracy Weber & Charles Ornstein, *Two Leaders in Pain Treatment Have Long*
 26 *Ties to Drug Industry*, ProPublica (Dec. 23, 2011, 2:14 PM),
<https://www.propublica.org/article/two-leaders-in-pain-treatment-have-long-ties-to-drug-industry>

27 ²⁴³ Linda Deutsch, *Doctor: 1,500 pills don't prove Smith was addicted*, Seattle
 28 Times (Sept. 22, 2010, 5:16 PM),
<http://www.seattletimes.com/entertainment/doctor-1500-pills-dont-prove-smithwas-addicted/>.

1 systematic contacts and personal relationships with the RICO Marketing
 2 Defendants and the Front Groups.

3 538. Although Dr. Fishman did not receive direct financial payments from
 4 the RICO Marketing Defendants, his ties to the opioid drug industry are legion.²⁴⁴

5 539. As Dr. Fishman's personal biography indicates, he is critical
 6 component of the RICO Marketing Defendants' control over their Front Groups,
 7 and the Front Groups support of the Opioid Marketing Enterprise's common
 8 purpose. Specifically, Dr. Fishman is an "internationally recognized expert on
 9 pain and pain management" who has served in "numerous leadership roles with
 10 the goal to alleviate pain."²⁴⁵ Dr. Fishman's roles in the pain industry include
 11 "past president of the American Academy of Pain Medicine [AAPM], past
 12 chairman of the board of directors of the American Pain Foundation [APF], and
 13 past board member of the American Pain Society [APS]."²⁴⁶ Dr. Fishman is also
 14 "the immediate past chair and current member of the Pain Care Coalition of the
 15 American Society of Anesthesiologists, American Pain Society, and Academy of
 16 Pain Medicine."²⁴⁷ Dr. Fishman's leadership positions within the central core of
 17 the RICO Marketing Defendants' Front Groups was a direct result of his
 18 participation in the Opioid Marketing Enterprise and agreement to cooperate with
 19 the RICO Marketing Defendants' pattern of racketeering activity.

20 540. Plaintiff The County is informed and believes that in exchange for
 21 the payments he received from the RICO Marketing Defendants, Dr. Fishman
 22 published, spoke, consulted, appeared in advertisements and on television
 23
 24

24²⁴⁴ Scott M. Fishman, M.D., Professor, U.C. Davis Health, Center for Advancing
 25 Pain Relief,
 26 https://www.ucdmc.ucdavis.edu/advancingpainrelief/our_team/Scott_Fishman.htm
 1 (accessed on February 28, 2018).

27²⁴⁵ *Id.*

28²⁴⁶ *Id.*

²⁴⁷ *Id.*

1 broadcasts, and traveled the country to promote more liberal prescribing of
2 opioids for many types of pain and conduct CME seminars sponsored by the
3 RICO Marketing Defendants and Front Groups.

4 541. There was regular communication between each of the RICO
5 Marketing Defendants, Front Groups and KOLs, in which information was shared,
6 misrepresentations are coordinated, and payments were exchanged. Typically, the
7 coordination, communication and payment occurred, and continues to occur,
8 through the use of the wires and mail in which the RICO Marketing Defendants,
9 Front Groups, and KOLs share information regarding overcoming objections and
10 resistance to the use of opioids for chronic pain. The RICO Marketing
11 Defendants, Front Groups and KOLs functioned as a continuing unit for the
12 purpose of implementing the Opioid Marketing Enterprise's scheme and common
13 purpose, and each agreed to take actions to hide the scheme and continue its
14 existence.

15 542. At all relevant times, the KOLs were aware of the RICO Marketing
16 Defendants' conduct, were knowing and willing participants in that conduct, and
17 reaped benefits from that conduct. The RICO Marketing Defendants selected
18 KOLs solely because they favored the aggressive treatment of chronic pain with
19 opioids. The RICO Marketing Defendants' support helped the KOLs become
20 respected industry experts. And, as they rose to prominence, the KOLs falsely
21 touted the benefits of using opioids to treat chronic pain, repaying the RICO
22 Marketing Defendants by advancing their marketing goals. The KOLs also knew,
23 but did not disclose, that the other KOLS and Front Groups were engaged in the
24 same scheme, to the detriment of consumers, prescribers, and The County. But
25 for the Opioid Marketing Enterprise's unlawful conduct, the KOLs would have
26 had incentive to disclose the deceit by the RICO Marketing Defendants and the
27 Opioid Marketing Enterprise, and to protect their patients and the patients of other
28 physicians. By failing to disclose this information, KOLs furthered the Opioid

1 Marketing Enterprise's scheme and common purpose, and reaped substantial
2 benefits.

3 543. As public scrutiny and media coverage focused on how opioids
4 ravaged communities in California and throughout the United States, the Front
5 Groups and KOLS did not challenge the RICO Marketing Defendants'
6 misrepresentations, seek to correct their previous misrepresentations, terminate
7 their role in the Opioid Marketing Enterprise, nor disclose publicly that the risks
8 of using opioids for chronic pain outweighed their benefits and were not supported
9 by medically acceptable evidence.

10 544. The RICO Marketing Defendants, Front Groups and KOLs engaged
11 in certain discrete categories of activities in furtherance of the common purpose of
12 the Opioid Marketing Enterprise. As reported in *Fueling an Epidemic*, the Opioid
13 Marketing Enterprise's conduct in furtherance of the common purpose of the
14 Opioid Marketing Enterprise involved: (1) misrepresentations regarding the risk
15 of addiction and safe use of prescription opioids for long-term chronic pain; (2)
16 lobbying to defeat measures to restrict over-prescription; (3) efforts to criticize or
17 undermine CDC guidelines; and (4) efforts to limit prescriber accountability. The
18 misrepresentations made in these publications are described in the following
19 section.

20 545. Efforts to Minimize the Risk of Addiction and Promote Opioid Use
21 As Safe for Long-Term Treatment of Chronic Pain – Members of the Opioid
22 Marketing Enterprise furthered the common purpose of the enterprise by
23 publishing and disseminating statements that minimized the risk of addiction and
24 misrepresented the safety of using prescription opioids for long-term treatment of
25 chronic, non-acute, and non-cancer pain. The categories of misrepresentations

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1 made by the Opioid Marketing Enterprise and the RICO Defendants included the
 2 following:²⁴⁸

- 3 • The Use of Opioids for the Treatment of Chronic Pain: A Consensus
 4 Statement From the American Academy of Pain Medicine and the
 5 American Pain Society, 13 Clinical J. Pain 6 (1997). The “landmark
 6 consensus” was published by the AAPM and APS. Dr. Portenoy was the
 7 sole consultant. A member of Purdue’s speaker bureau authored the
 8 consensus.
- 9 • *Model Guidelines for the Use of Controlled Substances for the Treatment of*
 10 *Pain* (1998, 2004, 2007).²⁴⁹ These guidelines, originally published by the
 11 FSMB in collaboration with RICO Defendants, advocated that opioids were
 12 “essential” and that “misunderstanding of addiction” contributed to
 13 undertreated pain.
- 14 • Oxycontin: Balancing Risks and Benefits: Hearing of the S. Comm. on
 15 Health, Education, Labor and Pensions, Testimony by John D. Giglio,
 16 M.A., J.D., Executive Direction of the APF (2002).²⁵⁰
- 17 • *The Management of Persistent Pain in Older Persons* (2002). These
 18 guidelines were published by AGS with substantial funding from Endo,
 19 Purdue and Janssen.
- 20 • *Overview of Management Options* (2003, 2007, 2010, and 2013).²⁵¹ This
 21 CME was edited by Dr. Portenoy, sponsored by Purdue, and published by

23 ²⁴⁸ As noted below, the earliest misrepresentations disseminated by the RICO
 24 Defendants and the Opioid Marketing Enterprise began in 1997 and has continued
 25 unabated since that time. Therefore, this list is alleged as fully and completely as
 26 possible.

27 ²⁴⁹ *Model Policy for the Use of Controlled Substances for the Treatment of Pain*,
 28 Federation of State Medical Boards of the United States, May 2004,
 https://www.ihs.gov/painmanagement/includes/themes/newihstheme/display_objects/documents/modelpolicytreatmentpain.pdf (last accessed on March 9, 2018).

25 ²⁵⁰ Oxycontin: Balancing Risks and Benefits: Hearing of the S. Comm. on Health,
 26 Education, Labor and Pensions, Testimony by John D. Giglio, M.A., J.D.,
 27 Executive Direction of the APF (2002.)

1 the American Medical Association. It taught that opioids, unlike non-
 2 prescription pain medication are safe at high doses.

- 3 • *Understanding Your Pain: Taking Oral Opioid Analgesics* (2004).²⁵² This
 4 article, published by Endo Pharmaceuticals advocated that withdrawal and
 5 needing to take higher dosages are not signs of addiction.
- 6 • Interview by Paula Moyer with Scott M. Fishman, M.D. (2005). Dr.
 7 Fishman advocated that “the risks of addiction are . . . small and can be
 8 managed.”²⁵³
- 9 • Open-label study of fentanyl effervescent buccal tablets in patients with
 10 chronic pain and breakthrough pain: interim safety and tolerability results
 11 (2006).²⁵⁴ Dr. Webster gave this CME, sponsored by Cephalon, that
 12 misrepresented that opioids were safe for the treatment of non-cancer pain.
- 13 • *Treatment Options: A Guide for People Living With Pain* (2007). This
 14 document was published by the APF and sponsored by Cephalon and
 15 Purdue.²⁵⁵

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 18 ²⁵¹ Portenoy, et al., *Overview of Management Options*, <https://cme.ama-assn.org/activity/1296783/detail.aspx>. On information and belief, this CME was
 19 published by the American Medical Association in 2003, 2007, 2010, and 2013.

20
 21 ²⁵² Margo McCaffery & Chris Pasero, *Understanding Your Pain: Taking Oral Opioid Analgesics*, Endo Pharmaceuticals (2004),
<https://www.yumpu.com/en/document/view/35479278/understanding-your-pain-taking-oral-opioid-analgesics> (last accessed March 8, 2018).

22
 23 ²⁵³ Interview by Paula Moyer with Scott M. Fishman, M.D., Professor of Anesthesiology and Pain Medicine, Chief of the Division of Pain Medicine, Univ. of Cal., Davis (2005), available at <http://www.medscape.org/viewarticle/500829>.

24
 25 ²⁵⁴ Hale ME, Webster LR, Peppin JF, Messina J. Open-label study of fentanyl effervescent buccal tablets in patients with chronic pain and breakthrough pain: interim safety and tolerability results. Program and abstracts of the annual meeting of the American Academy of Pain Medicine; February 22-25, 2006; San Diego, California. Abstract 120. Published with permission of Lynn R. Webster, MD, https://www.medscape.org/viewarticle/524538_2 (accessed on March 6, 2018).

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 27 ²⁵⁵ Am. Pain Found., *Treatment Options: A Guide for People Living in Pain* (2007) [hereinafter APF, *Treatment Options*],
<https://assets.documentcloud.org/documents/277605/apf-treatmentoptions.pdf> (last accessed on March 8, 2018).

- 1 • *Responsible Opioid Prescribing: A Physician's Guide* (2007).²⁵⁶ This
2 book, authored by Dr. Fishman was financed by the FSMB with funding
3 from Cephalon, Endo and Purdue.
- 4 • *Avoiding Opioid Abuse While Managing Pain* (2007).²⁵⁷ This book, co-
5 authored by Dr. Webster, misrepresented that for prescribers facing signs of
6 aberrant behavior, increasing the dose in “most cases . . . should be a
7 clinician’s first response.”
- 8 • *Screener and Opioid Assessment for Patients with Pain (SOAPP)® Version
9 1.0-SF* (2008).²⁵⁸ This screening tool was published by the National
10 Institutes of Health with support from Endo through an educational grant,
11 and advocated that most patients are able to successfully remain on long-
12 term opioid therapy without significant problems.
- 13 • *Case Challenges in Pain Management: Opioid Therapy for Chronic Pain*
14 (2007).²⁵⁹ This article, sponsored by Endo, misrepresented that opioids are
15 a highly effective class of analgesic drugs.
- 16 • *Opioid-Based Management of Persistent and Breakthrough Pain* (2008).²⁶⁰
17 This document was written by Dr. Fine and sponsored by an educational
18
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20 ²⁵⁶ Scott M. Fishman, *Responsible Opioid Prescribing: A Physician's Guide*, 8-9
21 (Waterford Life Sciences 2007).

22 ²⁵⁷ Lynn Webster & Beth Dove, *Avoiding Opioid Abuse While Managing Pain*
23 (2007).

24 ²⁵⁸ *Screener and Opioid Assessment for Patients with Pain (SOAPP)® Version 1.0-SF*, PainEdu.org, 2008, <https://www.nhms.org/sites/default/files/Pdfs/SOAPP-5.pdf> (last accessed on March 8, 2018).

25 ²⁵⁹ Charles E. Argoff, *Case Challenges in Pain Management: Opioid Therapy for Chronic Pain*, Pain Med. News,
26 https://www.painmedicinenews.com/download/BtoB_Opana_WM.pdf (last visited on March 8, 2018).

27 ²⁶⁰ Perry G Fine, MD, et al. *Opioid-Based Management of Persistent and Breakthrough Pain*, Pain Medicine News,
28 <https://www.yumpu.com/en/document/view/11409251/opioid-based-management-of-persistent-and-breakthrough-pain> (accessed on February 27, 2018).

1 grant from Cephalon. Dr. Fine advocated for the prescription of rapid onset
 2 opioids “in patients with non-cancer pain.”

- 3 • *Optimizing Opioid Treatment for Breakthrough Pain* (2008).²⁶¹ Dr.
 4 Webster presented an online seminar (webinar) sponsored by Cephalon, that
 5 misrepresented that non-opioid analgesics and combination opioids
 6 containing non-opioids are less effective because of dose limitations.
- 7 • *Clinical Guidelines for the Use of Chronic Opioid Therapy in Chronic Non-*
 8 *Cancer Pain* (2009).²⁶² These guidelines were published by AAPM and
 9 APS. Fourteen of the twenty-one panel members, including Dr. Portenoy
 10 and Dr. Fine, received support from the RICO Defendants.
- 11 • *Pharmacological Management of Persistent Pain in Older Persons*
 12 (2009).²⁶³ These guidelines were published by AGS, with substantial
 13 funding from Endo, Purdue, and Janssen, updated the 2002 guidelines and
 14 misrepresented that the risks of addiction are exceedingly low.
- 15 • Iraq War Veteran Amputee, Pain Advocate and New Author Release Exit
 16 Wounds: A Survival Guide to Pain Management for Returning Veterans
 17 and Their Families,²⁶⁴ American Pain Foundation, 2009. This article was
 18 published in 2009 and sponsored by Purdue.

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 21 ²⁶¹ Lynn Webster, *Optimizing Opioid Treatment for Breakthrough Pain*, Medscape,
 22 http://www.medscape.org/viewarticle/563417_6 (last visited Dec. 11, 2017).

22 ²⁶² Roger Chou et al., Clinical Guidelines for the Use of Chronic Opioid Therapy in
 23 Chronic Non-Cancer Pain, 10 J. Pain 113 (2009).

23 ²⁶³ *Pharmacological Management of Persistent Pain in Older Persons*, 57 J. Am.
 24 Geriatrics Soc'y 1331, 1339, 1342 (2009), available at
<https://www.nhqualitycampaign.org/files/AmericanGeriatricSociety-PainGuidelines2009.pdf> (last accessed on March 9, 2018).

25 ²⁶⁴ Iraq War Veteran Amputee, Pain Advocate and New Author Release Exit
 26 Wounds: A Survival Guide to Pain Management for Returning Veterans and Their
 27 Families, Coalition for Iraq + Afghanistan Veterans,
<http://web.archive.org/web/20100308224011/http://coalitionforveterans.org:80/2009/10/iraq-war-veteran-amputee-pain-advocate-and-new-author-releases-exit-wounds-a-survival-guide-to-pain-management-for-returning-veterans-and-their-families> (last visited March 1, 2018)

- 1 • *Finding Relief: Pain Management for Older Adults*, (2009).²⁶⁵ This article
2 was a collaboration between the American Geriatrics Society, AAPM and
3 Janssen.
- 4 • Good Morning America (2010). Dr. Portenoy appeared on Good Morning
5 America and stated that “Addiction, when treating pain, is distinctly
6 uncommon.”²⁶⁶
- 7 • *A Policymaker’s Guide to Understanding Pain & Its Management, American Pain Foundation* (2011).²⁶⁷ APF published this document, that
8 was sponsored by Purdue, which argued that the notion of strong pain
9 leading to addiction is a common misconception.
- 10 • *Managing Patient’s Opioid Use: Balancing the Need and the Risk* (2011).²⁶⁸ Dr. Webster presented a webinar, sponsored by Purdue, that
11 misrepresented the ability to use risk screen tools, urine samples and patient
12 agreements to prevent overuse and overdose death.
- 13 • *Safe and Effective Opioid Rotation* (2012).²⁶⁹ This CME, delivered by Dr.
14 Fine, that is also available online, advocated for the safe and non-addictive
15 use of opioids to treat cancer and non-cancer patients over a person’s
16 “lifetime.”

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²⁶⁵ Finding Relief, Pain Management for Older Adults, (2009).

22 ²⁶⁶ Good Morning America (ABC television broadcast Aug. 30, 2010).

23 ²⁶⁷ A Policymaker’s Guide to Understanding Pain & Its Management, American
24 Pain Foundation (2011) at

25 5, <http://s3.documentcloud.org/documents/277603/apf-policymakers-guide.pdf>
26 (last visited March 6, 2018).

27 ²⁶⁸ See, *Managing Patient’s Opioid Use: Balancing the Need and the Risk*,
28 Emerging Solutions in Pain http://www.emergingsolutionsinpain.com/ce-education/opioid-management?option=com_continued&view=frontmatter&Itemid=303&course=209 (last visited Aug. 22, 2017).

29 ²⁶⁹ Perry A. Fine, *Safe and Effective Opioid Rotation*, YouTube (Nov. 8, 2012),
30 https://www.youtube.com/watch?v=_G3II9yqgXI.

- 1 • *Pain: Opioid Facts* (2012).²⁷⁰ This document was published online on
 2 Endo's website painknowledge.org and advocated for the use of opioids and
 3 downplayed the risk of addiction, even for people with a history of
 4 addiction and opioid use, and supported the concept of pseudoaddiction.

5 546. Efforts to Criticize or Undermine CDC Guidelines – Members of the
 6 Opioid Marketing Enterprise criticized or undermined the CDC Guidelines which
 7 represented “an important step – and perhaps the first major step from the federal
 8 government – toward limiting opioid prescriptions for chronic pain.” The
 9 following are examples of the actions taken by Opioid Marketing Enterprise
 10 members to prevent restriction on over-prescription:

- 11 • Several Front Groups, including the U.S. Pain Foundation, and the AAPM
 12 criticized the draft guidelines in 2015, arguing that the “CDC slides
 13 presented on Wednesday were not transparent relative to process and failed
 14 to disclose the names, affiliation, and conflicts of interest of the individuals
 15 who participated in the construction of these guidelines.”²⁷¹
- 16 • The AAPM criticized the prescribing guidelines in 2016, through its
 17 immediate past president, stating “that the CDC guideline makes
 18 disproportionately strong recommendations based upon a narrowly selected
 19 portion of the available clinical evidence.”²⁷²

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 23 ²⁷⁰ *Pain: Opioid Facts*,
 24 http://web.archive.org/web/20120112051109/http://www.painknowledge.org/patient/pdf/Patient%20Education%20b380_b385%20%20pf%20opioid.pdf (last visited March 6, 2018).

25 ²⁷¹ Pat Anson, *Chronic Pain Group Blasts CDC for Opioid Guidelines*, Pain News
 26 Networks, <https://www.painnewsnetwork.org/stories/2015/9/22/chronic-pain-groups-blast-cdc-for-opioid-guidelines> (last accessed on March 8, 2018).

27 ²⁷² Practical Pain Management, Responses and Criticisms Over New CDC Opioid
 28 Prescribing Guidelines
 29 (<https://www.practicalpainmanagement.com/resources/news-and-research/responses-criticisms-over-new-cdc-opioid-prescribing-guidelines>)
 30 (accessed Sept. 28, 2017).

1 547. In each of the actions performed by members of the Opioid
2 Marketing Enterprise, described above, the members of the Opioid Marketing
3 Enterprise made branded and unbranded marketing claims about prescription
4 opioids that misrepresented prescription opioids as non-addictive and safe for use
5 as identified in following section.

6 **4. Members of the Opioid Marketing Enterprise**
7 **Furthered the Common Purpose by Making**
8 **Misrepresentations.**

9 548. The RICO Marketing Defendants, Front Groups and KOLs
10 participated in the conduct of the Opioid Marketing Enterprise and shared in the
11 common purpose of marketing opioids for chronic pain through a pattern of
12 racketeering activity (including multiple instances of mail and wire fraud) by
13 knowingly making material misrepresentations or omissions to California
14 prescribers, consumers, the general public, regulators and The County. All of the
15 misrepresentations made by members of the Opioid Marketing Enterprise
16 furthered the common purpose of the Enterprise.

17 549. Members of the Opioid Marketing Enterprise, including the RICO
18 Marketing Defendants, Front Groups and KOLs made multiple unbranded
19 marketing misrepresentations about the benefits and risks of opioid use, in
20 furtherance of the Opioid Marketing Enterprise's common purpose, as follows:

21 550. Members of the Opioid Marketing Enterprise minimized the risks of
22 addiction and/or construed opioids as non-addictive:

- 23 • AAMP and APS endorsed the use of opioids to treat chronic pain and
24 claimed that the risk of a patients' addiction to opioids was low.²⁷³

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28 ²⁷³ The Use of Opioids for the Treatment of Chronic Pain: A Consensus Statement
From the American Academy of Pain Medicine and the American Pain Society, 13
Clinical J. Pain 6 (1997).

- “[O]pioids are safe and effective, and only in rare cases lead to addiction.”²⁷⁴
 - “[T]he risks of addiction are . . . small and can be managed.”²⁷⁵

Medscape: Controversy surrounds both the undertreatment and overtreatment of pain. Overtreatment of pain obviously involves the fear of causing or perpetuating opioid drug dependency. What recommendations can you give to primary care physicians who are reluctant to prescribe opioids, either as adjuncts or primary agents for pain control, because of these fears?

Dr. Fishman: It used to be that when you had a patient with pain and you were worried about giving him or her a drug that may be abusable or may cause addiction, the safest thing to do was nothing, as though doing nothing would have no risks in and of itself. We know that the risks of addiction are there, but they are small and can be managed. The AAPM is going to be at the forefront, educating

- Represented that calling opioids “‘narcotics’ reinforces myths and misunderstandings as it places emphasis on their potential abuse rather than on the importance of their use as pain medicines.”²⁷⁶
 - “Addiction, when treating pain, is distinctly uncommon. If a person does not have a history, a personal history, of substance abuse, and does not have a history in the family of substance abuse, and does not have a very major psychiatric disorder, most doctors can feel very assured that that person is not going to become addicted.”²⁷⁷

OPIOID ANALGESICS (NARCOTICS)

Opioid analgesics are another important class of medications that are very effective pain relievers. As mentioned before, they may also be called "narcotics." Unfortunately, this term is used by law enforcement to refer to drugs that are abused. Cocaine and heroin are called narcotics even though they are very different kinds of drugs. Calling opioid analgesics "narcotics" reinforces myths and misunderstandings as it places emphasis on their potential abuse rather than on the importance of their use as pain medicines. In the pain treatment world, the word opioid is used when speaking about this class of medications.

²⁷⁴ *Oxycontin: Balancing Risks and Benefits: Hearing of the S. Comm. on Health, Education, Labor and Pensions*, 107th Cong. 2 (Feb. 12, 2002) (testimony of John D. Giglio, M.A., J.D., Executive Director, American Pain Foundation), <https://www.help.senate.gov/imo/media/doc/Giglio.pdf>.

²⁷⁵ Interview by Paula Moyer with Scott M. Fishman, M.D., Professor of Anesthesiology and Pain Medicine, Chief of the Division of Pain Medicine, Univ. of Cal., Davis (2005), available at <http://www.medscape.org/viewarticle/500829>.

²⁷⁶ APF, *Treatment Options*, <https://assets.documentcloud.org/documents/277605/apf-treatmentoptions.pdf> (last accessed on March 8, 2018).

²⁷⁷ Good Morning America (ABC television broadcast Aug. 30, 2010).

- 1 • The risk of addiction is manageable for patients regardless of past abuse
2 histories.²⁷⁸
- 3 • “[T]he likelihood that the treatment of pain using an opioid drug which is
4 prescribed by a doctor will lead to addiction is extremely low.”²⁷⁹
- 5 • Patients might experience withdrawal symptoms associated with physical
6 dependence as they decrease their dose, “[b]ut unlike actual addicts, such
7 individuals, if they resume their opioid use, will only take enough
8 medication to alleviate their pain.”²⁸⁰
- 9 • The notion that “strong pain medication leads to addiction” is a “common
10 misconception.”²⁸¹

SOME COMMON MISCONCEPTIONS ABOUT PAIN

13 **Use of strong pain medication leads to addiction.** Many people living with
14 pain, and even some health care practitioners, falsely believe that opioid pain
15 medicines are universally addictive. As with any medication, there are risks, but
16 these risks can be managed when these medicines are properly prescribed and
 taken as directed. For more information about safety issues related to opioids
 and other pain therapies, visit www.painsafe.org.

20 _____
21 ²⁷⁸ Roger Chou et al., Clinical Guidelines for the Use of Chronic Opioid Therapy in
Chronic Non-Cancer Pain, 10 J. Pain 113 (2009).

22 ²⁷⁹ Thomas Catan and Evan Perez, *A Pain-Drug Champion Has Second Thoughts*,
The Wall Street Journal (Dec. 17, 2012),
<https://www.wsj.com/articles/SB10001424127887324478304578173342657044604>.

24 ²⁸⁰ Brief Amici Curiae of American Pain Foundation, National Foundation for the
Treatment of Pain, and The Ohio Pain Initiative, in Support of
Defendants/Appellants, Howland v. Purdue Pharma, L.P., et al., Appeal No. CA
2002 09 0220 (Butler Co., Ohio 12th Court of Appeals, Dec. 23, 2002),
<https://ia801005.us.archive.org/23/items/279014-howland-apf-amicus/279014-howland-apf-amicus.pdf>.

28 ²⁸¹ A Policymaker’s Guide to Understanding Pain & Its Management, American
Pain Foundation (2011) at 5, <http://s3.documentcloud.org/documents/277603/apf-policymakers-guide.pdf> (last visited March 6, 2018).

- “Addiction to an opioid would mean that your pain has gone away but you still take the medicine regularly when you don’t need it for pain, maybe just to escape your problems.”²⁸²

How can I be sure I'm not addicted?

- ◆ Addiction to an opioid would mean that your pain has gone away but you still take the medicine regularly when you don't need it for pain, maybe just to escape from your problems.
 - ◆ Ask yourself: Would I want to take this medicine if my pain went away? If you answer no, you are taking opioids for the right reasons—to relieve your pain and improve your function. You are not addicted.

- 11 • Even for patients assessed to have a risk of abuse, “it does not mean that
12 opioid use will become problematic or that opioids are contraindicated.”²⁸³

WILL I BECOME ADDICTED TO OPIOIDS?

This is a key issue for both you and your doctor to discuss. In general, people who have no history of drug abuse, including tobacco, and use their opioid medication as directed will probably not become addicted. However, patients who misuse or abuse opioids can become addicted to them, so openly discussing your concerns with your doctor is important. People who are addicted to opioids crave the "unusually happy" effect the drug has on them (a "buzz" or "high") and will continue to use the drug even though it harms them.



²⁶ 282 Margo McCaffery & Chris Pasero, *Understanding Your Pain: Taking Oral*
Opioid Analgesics, Endo Pharmaceuticals (2004),
[https://www.yumpu.com/en/document/view/35479278/understanding-your-pain-](https://www.yumpu.com/en/document/view/35479278/understanding-your-pain-taking-oral-opioid-analgesics)
²⁷ taking-oral-opioid-analgesics (last accessed March 8, 2018).

²⁸³ Scott M. Fishman, *Responsible Opioid Prescribing: A Physician's Guide*, 8-9 (Waterford Life Sciences 2007).

- [P]eople who have no history of drug abuse, including tobacco, and use their opioid medication as directed will probably not become addicted.”²⁸⁴
 - “A history of addiction would not rule out the use of opioid pain relievers.”²⁸⁵



A history of addiction would not rule out the use of opioid pain relievers.

- APF published exit wounds, wherein it represented that “[l]ong experience with opioids shows that people who are not predisposed to addiction are very unlikely to become addicted to opioid pain medications.”²⁸⁶

Iraq War Veteran Amputee, Pain Advocate and New Author Releases Exit Wounds: A Survival Guide to Pain Management for Returning Veterans and Their Families



"Its now four years since I lay in the dirt, near death, on the side of the road in Fallujah. I'm grateful for all the things I have, and proud of all I've accomplished. In the end though, I don't measure how far I've come by goals achieved, or academic degrees earned, or running trophies won. For me, what counts is that pain no longer rules my life." – Derek McGinnis

The American Pain Foundation (APF) announces the release of Iraq War Veteran and Pain Advocate Derek McGinnis' first book, *Exit Wounds: A Survival Guide to Pain Management for Returning Veterans and Their Families*. Written in collaboration with nationally renowned pain experts, the release date of September 21 for *Exit Wounds* coincided with September's designation as Pain Awareness Month.

- Patients rarely become addicted to prescribed opioids.²⁸⁷

²⁸⁴ *Pain: Opioid Facts*,
http://web.archive.org/web/20120112051109/http://www.painknowledge.org/patienteD/pdf/Patient%20Education%20b380_b385%20%20pf%20opioid.pdf (last visited March 6, 2018).

285 *Id*

²⁸⁶ Iraq War Veteran Amputee, Pain Advocate and New Author Release Exit Wounds: A Survival Guide to Pain Management for Returning Veterans and Their Families, Coalition for Iraq + Afghanistan Veterans, <http://web.archive.org/web/20100308224011/http://coalitionforveterans.org:80/2009/10/iraq-war-veteran-amputee-pain-advocate-and-new-author-releases-exit-wounds-a-survival-guide-to-pain-management-for-returning-veterans-and-their-families> (last visited March 1, 2018).

- 1 • Concern about patients becoming addicted reflects widespread failure to
 2 appreciate the distinction between “(1) *tolerance* – the body’s tendency to
 3 become accustomed to a substance so that, over time, a larger amount is
 4 needed to produce the same physical effect (pain relief) and *physical*
 5 *dependence* – the state defined by the experience of adverse symptoms if a
 6 drug is abruptly withdrawn . . . each of which is common with pain
 7 patients” . . . “and, on the other hand, (2) the psychological and behavioral
 8 patterns – an unhealthy craving for, compulsive use of, and unhealthy
 9 fixation – that characterize *addiction*.²⁸⁸
- 10 • Evidence establishes that the risk of drug addiction (historically the
 11 principal *medical* justification for withholding or limiting opioids) is far
 12 less substantial than long and widely assumed.²⁸⁹
- 13 the addiction. Although the risks are exceedingly low in
 14 older patients with no current or past history of substance
 15 abuse, it is impossible to identify every patient who will
 16 abuse or divert prescribed opioids.¹¹⁷ Therefore, many cli-
 17 nicians have adopted a Universal Precautions approach to
 18 pain management.¹¹⁸ This paradigm stresses that every pa-
- 19 • The “risks [of addiction] are exceedingly low in older patients with no
 20 current or past history of substance abuse.”²⁹⁰

21 ²⁸⁷ Brief of Amici the American Pain Foundation, the National Pain Foundation,
 22 and the National Foundation for the Treatment of Pain, 2005 WL 2405247, *9
 23 (citing Portenoy, Russell, et al., *Acute and Chronic Pain*, in *COMPREHENSIVE*
 24 *TEXTBOOK OF SUBSTANCE ABUSE*, 863-903 (Lowinson et al. eds., 4th ed.
 25 2005), *United States v. Hurwitz*, 459 F.3d 463 (2006) (citing Portenoy et. al.,
 26 *Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 Cases*,
 27 PAIN, Vol. 25, 171-186, (1986)).

28 ²⁸⁸ Brief of Amici Russel K. Portenoy, et al., 2005 WL 2405249, *United States v.*
 29 *Hurwitz*, 459 F.3d 463 (2006) (emphasis in original).

30 ²⁸⁹ *Id.* and sources cited at note 9.

31 ²⁹⁰ *Pharmacological Management of Persistent Pain in Older Persons*, 57 J. Am.
 32 Geriatrics Soc'y 1331, 1339, 1342 (2009), available at
 33 <https://www.nhqualitycampaign.org/files/AmericanGeriatricSociety-PainGuidelines2009.pdf> (last accessed on March 9, 2018).

1 551. Members of the Opioid Marketing Enterprise advocated that opioids
2 were safe and effective for long-term treatment of chronic, non-acute and non-
3 cancer pain:

- 4 • “Opioids are an essential option for treating *moderate* to severe pain
5 associated with surgery or trauma. They may also be an important part of
6 the management of persistent pain unrelated to cancer.”²⁹¹

7 **Clinical uses**

8 Opioids are an essential option for treating moderate to severe pain associated with
9 surgery or trauma, and for pain related to cancer. They may also be an important part of
10 the management of persistent pain unrelated to cancer. These medicines block pain

- 11 • Opioids were a safe and effective treatment for pain as part of a
12 physicians’ treatment guidelines.²⁹²
- 13 • The “small risk of abuse does not justify the withholding of these highly
14 effective analgesics from chronic pain patients.”²⁹³
- 15 • Opioids, unlike some non-prescription pain medications, are safe at high
16 doses.²⁹⁴
- 17 • Falsely representing “recent findings suggesting that most patients are able
18 to successfully remain on long-term opioid therapy without significant
19 problems.”²⁹⁵

20

21 ²⁹¹ APF, *Treatment Options*,
22 <https://assets.documentcloud.org/documents/277605/apf-treatmentoptions.pdf>.

23 ²⁹² Roger Chou et al., Clinical Guidelines for the Use of Chronic Opioid Therapy in
24 Chronic Non-Cancer Pain, 10 J. Pain 113 (2009).

25 ²⁹³ Brief Amici Curiae of American Pain Foundation, National Foundation for the
26 Treatment of Pain, and The Ohio Pain Initiative, in Support of
27 Defendants/Appellants, Howland v. Purdue Pharma, L.P., et al., Appeal No. CA
28 2002 09 0220 (Butler Co., Ohio 12th Court of Appeals, Dec. 23, 2002),
 <https://ia801005.us.archive.org/23/items/279014-howland-apf-amicus/279014-howland-apf-amicus.pdf>.

29 ²⁹⁴ Portenoy, et al., *Overview of Management Options*, <https://cme.ama-assn.org/activity/1296783/detail.aspx>. On information and belief, this CME was published in 2003, 2007, 2010, and 2013.

30 ²⁹⁵ *Screener and Opioid Assessment for Patients with Pain (SOAPP)® Version 1.0-SF*, PainEdu.org, 2008, <https://www.nhms.org/sites/default/files/Pdfs/SOAPP-5.pdf> (last accessed on March 8, 2018).

- 1 • Opioid therapy is an appropriate treatment for chronic, non-cancer pain and
2 integral to good medical practice.²⁹⁶
- 3 • Even for patients assessed to have a risk of abuse, “it does not mean that
4 opioid use will become problematic or that opioids are contraindicated.”²⁹⁷
- 5 • Opioid therapy is an appropriate treatment for chronic, non-cancer pain and
6 integral to good medical practice.²⁹⁸
- 7 • Broadly classifying pain syndromes as “either cancer- or non-cancer-related
8 has limited utility,” and recommended dispensing rapid onset opioids “in
9 patients with non-cancer pain.”²⁹⁹

10 The data suggest that FEBT is safe and well tolerated in opioid-tolerant patients
11 with chronic noncancer pain. There was no respiratory depression, and a low
12 incidence of treatment-related adverse events was reported. Thirty-five patients
13 (37%) reported having at least 1 adverse event, the most common of which were
14 nausea (7%) and dizziness (5%).

- 15 • Opioids are safe and well-tolerated in patients with chronic pain and break
16 through pain.³⁰⁰
- 17 • Non-opioid analgesics and combination opioids containing non-opioids
18 such as aspirin and acetaminophen are less effective than opioids because of
19 dose limitations on non-opioids.³⁰¹

20 ²⁹⁶ Scott M. Fishman, *Responsible Opioid Prescribing: A Physician’s Guide*, 8-9
21 (Waterford Life Sciences 2007).

22 ²⁹⁷ *Id.*

23 ²⁹⁸ Scott M. Fishman, *Responsible Opioid Prescribing: A Physician’s Guide*, 8-9 (Waterford Life
24 Sciences 2007).

25 ²⁹⁹ Perry G Fine, MD, et al. *Opioid-Based Management of Persistent and
26 Breakthrough Pain*, Pain Medicine News,
27 <https://www.yumpu.com/en/document/view/11409251/opioid-based-management-of-persistent-and-breakthrough-pain> (accessed on February 27, 2018).

28 ³⁰⁰ Hale ME, Webster LR, Peppin JF, Messina J. Open-label study of fentanyl
effervescent buccal tablets in patients with chronic pain and breakthrough pain:
interim safety and tolerability results. Program and abstracts of the annual meeting
of the American Academy of Pain Medicine; February 22-25, 2006; San Diego,
California. Abstract 120. Published with permission of Lynn R. Webster, MD,
https://www.medscape.org/viewarticle/524538_2 (accessed on March 6, 2018).

adverse events. Furthermore, although nonopioid analgesics, such as acetaminophen and NSAIDs/COX-2 inhibitors, are effective for nociceptive pain, their use in BTP is likewise restricted by dose-limiting toxicities, an onset of action that is delayed by 30 minutes or more, a long duration of action that could augment sedation and other side effects of the agent used for the baseline pain, and fears about renal and cardiovascular complications. Agents that combine an SAO, such as hydrocodone plus acetaminophen, aspirin, or ibuprofen, also are limited by potential adverse events and ceiling effects from the nonopioid component.

- Opioids can safely alleviate chronic pain unresponsive to other medication.³⁰²
- Medical organization and government-sponsored clinical guidelines support and encourage opioid treatment for chronic pain.³⁰³
- Respiratory depression, even at extremely high levels, does not occur in the context of appropriate clinical treatment.³⁰⁴
- There is no “ceiling dose” for opioids.³⁰⁵
- Opioid analgesics are the most effective way to treat pain of moderate to severe intensity and often the only treatment that provides significant relief.³⁰⁶
- “Opioid rotations” (switching from one opioid to another) not only for cancer patients, but also for non-cancer patients, may need to occur four or five times over a person’s “lifetime” to manage pain.³⁰⁷

³⁰¹ Lynn Webster, *Optimizing Opioid Treatment for Breakthrough Pain*, Medscape, http://www.medscape.org/viewarticle/563417_6 (last visited Dec. 11, 2017).

³⁰² Brief of Amici the American Pain Foundation, the National Pain Foundation, and the National Foundation for the Treatment of Pain, 2005 WL 2405247, *8, *United States v. Hurwitz*, 459 F.3d 463 (2006) (citing Portenoy et. al, *Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 Cases*, PAIN, Vol. 25, 171-186, (1986)).

³⁰³ *Id.* at *8, and sources cited in note 11.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ Brief of Amici Russel K. Portenoy, et al., 2005 WL 2405249, *United States v. Hurwitz*, 459 F.3d 463.

- 1 • Opioids represent a highly effective . . . class of analgesic medications for
2 controlling both chronic and acute pain. The phenomenon of tolerance to
3 opioids – the gradual waning of relief at a given dose – and fears of abuse,
4 diversion, and misuse of these medications by patients have led many
5 clinicians to be wary of prescribing these drugs, and/or to restrict dosages to
6 levels that may be insufficient to provide meaningful relief.³⁰⁸

7 Opioids represent a highly effective but controversial and often misunder-
8 stood class of analgesic medications for controlling both chronic and acute
9 pain. The phenomenon of tolerance to opioids—the gradual waning of relief at
10 a given dose—and fears of abuse, diversion, and misuse of these medications
11 by patients have led many clinicians to be wary of prescribing these drugs,
12 and/or to restrict dosages to levels that may be insufficient to provide mean-
13 ingful relief.³

14 552. Members of the Opioid Marketing Enterprise created and
15 championed the concept of “pseudoaddiction,” advocating that signs of addiction
16 were actually pseudoaddiction that required prescribing additional opioids:

- 17 • Patients might experience withdrawal symptoms associated with physical
18 dependence as they decrease their dose, “[b]ut unlike actual addicts, such
19 individuals, if they resume their opioid use, will only take enough
20 medication to alleviate their pain.”³⁰⁹

21
22

³⁰⁷ Perry A. Fine, *Safe and Effective Opioid Rotation*, YouTube (Nov. 8, 2012),
23 https://www.youtube.com/watch?v=_G3II9yqgXI.

24 ³⁰⁸ Charles E. Argoff, *Case Challenges in Pain Management: Opioid Therapy for*
25 *Chronic Pain*, Pain Med. News, 2007,
26 https://www.painmedicinewebs.com/download/BtoB_Opana_WM.pdf (last visited
27 on March 8, 2018).

28 ³⁰⁹ Brief Amici Curiae of American Pain Foundation, National Foundation for the
29 Treatment of Pain, and The Ohio Pain Initiative, in Support of
30 Defendants/Appellants, Howland v. Purdue Pharma, L.P., et al., Appeal No. CA
31 2002 09 0220 (Butler Co., Ohio 12th Court of Appeals, Dec. 23, 2002),
32 <https://ia801005.us.archive.org/23/items/279014-howland-apf-amicus/279014-howland-apf-amicus.pdf>.

- 1 ● “Addiction **IS NOT** when a person develops ‘withdrawal’ (such as
2 abdominal cramping or sweating) after the medicine is stopped or the dose
3 is reduced by a large amount. . . . Addiction also **IS NOT** what happens
4 when some people taking opioids need to take a higher dose after a period
5 of time in order for it to continue to relieve their pain. This normal
6 ‘tolerance’ to opioid medications doesn’t affect everyone who takes them
7 and does not, by itself, imply addiction.”³¹⁰
- 8 ● “Addiction to an opioid would mean that your pain has gone away but you
9 still take the medicine regularly when you don’t need it for pain, maybe just
10 to escape your problems.”³¹¹

11 *How can I be sure I’m not addicted?*

- 12 ◆ Addiction to an opioid would mean that
13 your pain has gone away but you still
14 take the medicine regularly when you
15 don’t need it for pain, maybe just to
16 escape from your problems.
- 17 ◆ Ask yourself: Would I want to take this
18 medicine if my pain went away? If you
19 answer no, you are taking opioids for
20 the right reasons—to relieve your pain
21 and improve your function. You are not
22 addicted.
- 23 ● Behaviors such as “[r]equesting [drugs] by name,” “[d]emanding or
24 manipulative behavior,” “[o]btaining drugs from more than one physician,”
25 and “[h]oarding opioids,” are all really signs of pseudoaddiction, rather than
26 genuine addiction.”³¹²

27

28 ³¹⁰ Margo McCaffery & Chris Pasero, *Understanding Your Pain: Taking Oral Opioid Analgesics*, Endo Pharmaceuticals (2004), http://www.thblack.com/links/RSD/Understand_Pain_Opioid_Analgesics.pdf (emphasis in original) (last accessed on March 9, 2018).

29 ³¹¹ *Id.*

30 ³¹² Scott M. Fishman, *Responsible Opioid Prescribing: A Physician’s Guide*, 8-9
31 (Waterford Life Sciences 2007).

- 1 • “Sometimes people behave as if they are addicted, when they are really in
2 need of more medication.”³¹³

3 • **ADDICTION** - A craving that
4 drives a person to take an
5 opioid even though it causes
6 harm. This is a problem that
7 needs immediate treatment.
8 This happens to some patients
9 who use opioids.

10 Sometimes people behave as
11 if they are addicted, when they
12 are really in need of more
13 medication. This can be treated
14 with higher doses of medicine.

- 15 • For prescribers facing signs of aberrant behavior, increasing the dose “in
16 most cases . . . should be the clinician’s first response.”³¹⁴

17 553. Members of the Opioid Marketing Enterprise advocated that long-
18 term use of prescription opioids would improve function, including but not limited
19 to, psychological health, and health-related quality of life:

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³¹³ *Pain: Opioid Facts*,
27 http://web.archive.org/web/20120112051109/http://www.painknowledge.org/patient/pdf/Patient%20Education%20b380_b385%20%20pf%20opiod.pdf (last
28 visited March 6, 2018).

29 ³¹⁴ Lynn Webster & Beth Dove, Avoiding Opioid Abuse While Managing Pain
(2007).

Because of their long history of use, the clinical profile of opioids has been very well characterized. Multiple clinical studies have shown that long-acting opioids, in particular, are effective in improving:

- Daily function
- Psychological health
- Overall health-related quality of life for people with chronic pain.¹²

- When opioids are managed, properly prescribed and taken as directed, they are effective in improving daily function, psychological health and health-related quality of life.³¹⁵
- Opioid therapy to relieve pain and improve function is a legitimate medical practice for acute and chronic pain of both cancer and non-cancer origins.³¹⁶
- “[Y]our level of function should improve, you may find you are now able to participate in activities of daily living, such as work and hobbies, that you were not able to enjoy when your pain was worse.”³¹⁷
- “The goal of opioid therapy is to . . . improve your function.”³¹⁸

The goal of opioid therapy is to control pain and improve your function.

³¹⁵ A Policymaker’s Guide to Understanding Pain & Its Management, American Pain Foundation (2011) at 5, <http://s3.documentcloud.org/documents/277603/apf-policymakers-guide.pdf> (last visited March 6, 2018).

³¹⁶ Scott M. Fishman, Responsible Opioid Prescribing: A Physician’s Guide, 8-9 (Waterford Life Sciences 2007); Scott M. Fishman, *Responsible Opioid Prescribing: A Clinician’s Guide*, 10-11 (2d ed. 2012).

³¹⁷ Plaintiffs are informed and believe that this misrepresentation was made on the website painknowledge.org.

³¹⁸ *Pain: Opioid Facts*, http://web.archive.org/web/20120112051109/http://www.painknowledge.org/patient/pdf/Patient%20Education%20b380_b385%20%20pf%20opioid.pdf (last visited March 6, 2018).

- The “goal” for chronic pain patients is to “improve effectiveness which is different from efficacy and safety.”³¹⁹



13 554. Members of the Opioid Marketing Enterprise represented that
14 screening questions and professional guidelines would help curb addiction and
15 potential abuse:

- Screening questions and professional guidelines will “easily and efficiently” allow physicians to manage risk and “minimize the potential for abuse.”³²⁰
 - Risk screening tools, urine testing, and patient agreements are a way to prevent “overuse of prescriptions” and “overdose deaths.”³²¹

²⁴ ³¹⁹ Perry A. Fine, *Safe and Effective Opioid Rotation*, YouTube (Nov. 8, 2012), https://www.youtube.com/watch?v=_G3II9yqgXI.

²⁵ 320 Scott M. Fishman, *Responsible Opioid Prescribing: A Physician's Guide*, 8-9 (Waterford Life Sciences 2007).

³²¹ See, *Managing Patient's Opioid Use: Balancing the Need and the Risk*, Emerging Solutions in Pain http://www.emergingsolutionsinpain.com/ce-education/opioid-management?option=com_continued&view=frontmatter&Itemid=303&course=209 (last visited Aug. 22, 2017).

1 **Program Overview**

2 Compliance with regulatory and policy-driven authorities mandates improvement in the treatment of patients on chronic opioid therapy (COT) to
3 ensure that the best possible care is provided to pain patients while minimizing potential risk of inappropriate use. Participants of this activity will
4 be able to evaluate current issues in appropriate patient selection and management of chronic pain patients treated with COT including a review
5 of the most current Risk Evaluation and Mitigation Strategies (REMS) requirements, updates in the development of novel delivery systems and
6 the practical application of assessment tools to assist in their daily practice.

- 7 • The risks of addiction and abuse can be managed by doctors and evaluated
8 with “tools.”³²²

9 555. In addition to the unbranded marketing misrepresentations made by
10 members of the Opioid Marketing Enterprise, the RICO Marketing Defendants
11 made misrepresentations in their branded marketing activities. The RICO
12 Marketing Defendants’ branded marketing misrepresentations furthered the
13 common purpose of the Opioid Marketing Enterprise because they advanced the
14 common messages of the Opioid Marketing Enterprise. For example:

15 556. The RICO Marketing Defendants misrepresented that opioids were
16 non-addictive or posed less risk of addiction or abuse:

- 17 • Purdue:
 - 18 ○ “Fear of addiction is exaggerated.”³²³

26

27 ³²² Perry A. Fine, *Safe and Effective Opioid Rotation*, YouTube (Nov. 8, 2012),
28 https://www.youtube.com/watch?v=_G3II9yqgXI.

27 ³²³ Harriet Ryan, et al., “*You Want A Description of Hell?*” *OxyContin’s 12-Hour Problem*, L.A. Times (May 5, 2016), <http://documents.latimes.com/oxycontin-press-release-1996/> (hereinafter “Ryan, Description of Hell”).

1 The fear of addiction is exaggerated.

2 One cause of patient resistance to appropriate pain treatment – the
3 fear of addiction – is largely unfounded. According to Dr. Max,
4 "Experts agree that most pain caused by surgery or cancer can be
5 relieved, primarily by carefully adjusting the dose of opioid
6 (narcotic) pain reliever to each patient's need, and that there is very
7 little risk of addiction from the proper uses of these drugs for pain
8 relief."

9 Paul D. Goldenheim, M.D., Vice President of **Purdue Pharma L.P.** in
10 Norwalk, Connecticut, agrees with this assessment. "Proper use of
11 medication is an essential weapon in the battle against persistent
12 pain. But too often fear, misinformation and poor communication stand
13 in the way of their legitimate use."

- 14 o "[W]e've discovered that the simplicity and convenience of twice-
15 daily dosing also enhances patient compliance with their doctor's
16 instructions."³²⁴

17 taking tablets every four to six hours. Moreover, we've discovered that
18 the simplicity and convenience of twice-daily dosing also enhances

19 https://www.nexis.com/results/enhdocview.do?docLinkInd=true&ersKey=23_T23962617276&format=GNBF

20

21 1/27/2016

22 patient compliance with their doctor's instructions."

- 23 o Long-acting, extended release formulations are safe and "less prone"
24 to abuse by patients and addiction.³²⁵
- 25 o OxyContin is safe and non-addictive when using extended release
26 formulations, and appropriate for use in non-cancer patients.³²⁶

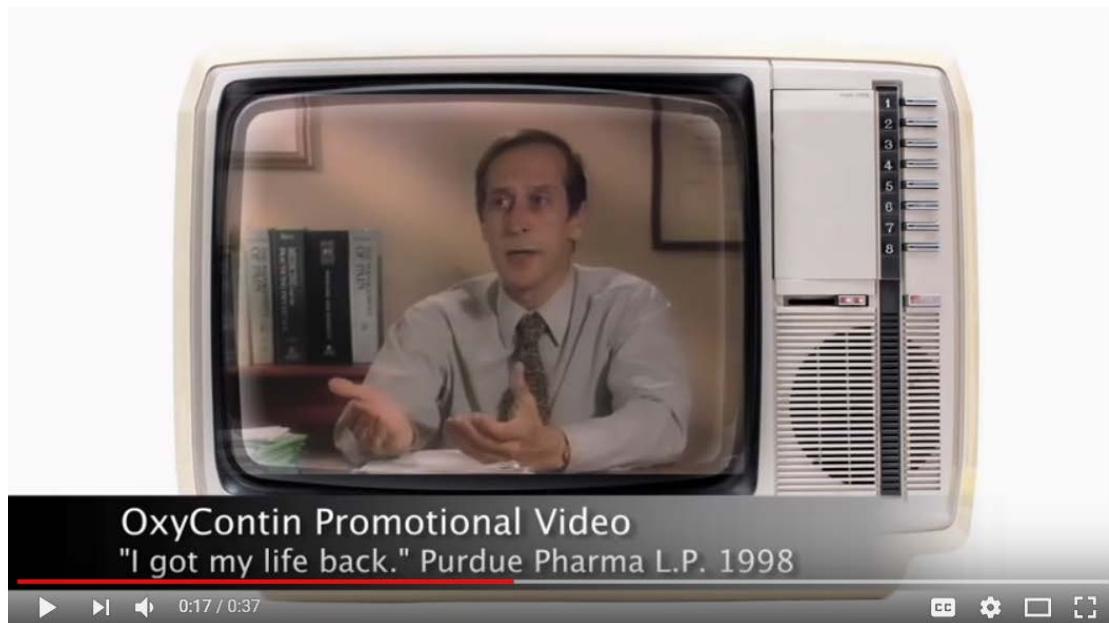
27

³²⁴ *Id.*

28 ³²⁵ Barry Meier, *In Guilty Plea, OxyContin Maker to Pay \$600 Million*, N.Y.
29 Times (May 10, 2007), <http://www.nytimes.com/2007/05/10/business/11drug-web.html> (hereinafter "Meier, Guilty Plea").

30 ³²⁶ Charles Ornstein & Tracy Weber, *American Pain Foundation Shuts Down as
31 Senators Launch Investigation of Prescription Narcotics*, ProPublica (May 8,
32 2012, 8:57 PM),
33 http://www.opb.org/news/article/america_pain_foundation_shuts_down_as_senato

- 1 ○ Consistently minimizing the risk of addiction in the use of opioids for
- 2 the treatment of chronic non-cancer-related pain.³²⁷
- 3 ○ OxyContin is virtually non-addicting.³²⁸
- 4 ○ “Assur[ing] doctors – repeatedly and without evidence – that ‘fewer
- 5 than one percent’ of patients who took OxyContin became
- 6 addicted.”³²⁹



- 17 ○ OxyContin was addiction resistant and had “abuse-deterrent
- 18 properties.”³³⁰
- 19 ○ Misrepresented the risk of addiction using misleading and inaccurate
- 20 promotions of OxyContin that were unsupported by science.³³¹

22 rs_launch_investigation_of_prescription_narcotics/ (hereinafter “Ornstein,
23 American Pain Foundation”).

24 ³²⁷ Art Van Zee, *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*, 99(2) Am. J. Pub. Health 221-27 (Feb. 2009) (hereinafter, “Van Zee, Promotion and Marketing”).

25 ³²⁸ Patrick Keefe, *The Family that Built an Empire of Pain*, New Yorker (Oct. 30, 2017), <https://www.newyorker.com/magazine/2017/10/30/the-family-that-built-an-empire-of-pain>

26 ³²⁹ *Id.*; see also “I got my life back,” OxyContin Promotional Video, 1998, <https://www.youtube.com/watch?v=Er78Dj5hyeI> (last accessed on March 8, 2018).

27 ³³⁰ *Id.*

- 1 ○ It was more difficult to extract the oxycodone from an OxyContin
2 tablet for intravenous abuse.³³²
- 3 ○ OxyContin created fewer chances for addiction than immediate-
4 release opioids.³³³
- 5 ○ OxyContin had fewer “peak and trough” effects than immediate-
6 release opioids resulting in less euphoria and less potential for abuse
7 than short-acting opioids.³³⁴
- 8 ○ Patients could abruptly stop opioid therapy without experiencing
9 withdrawal symptoms, and patients who took OxyContin would not
10 develop tolerance.³³⁵
- 11 ○ OxyContin did not cause a “buzz,” caused less euphoria, had less
12 addiction potential, had less abuse potential, was less likely to be
13 diverted than immediate-release opioids, and could be used to “weed
14 out” addicts and drug seekers.³³⁶
- 15 ○ Purdue published a prescriber and law enforcement education
16 pamphlet in 2011 entitled *Providing Relief, Preventing Abuse*, which
17 under the heading, “Indications of Possible Drug Abuse,” shows
18 pictures of the stigmata of injecting or snorting opioids—skin
19 popping, track marks, and perforated nasal septa. In fact, opioid
20 addicts who resort to these extremes are uncommon; the far more
21 typical reality is patients who become dependent and addicted

23 ³³¹ Press Release, U.S. Attorney for the Western District of Virginia, Statement of
24 United States Attorney John Brownlee on the Guilty Plea of the Purdue Frederick
25 Company and Its Executives for Illegally Misbranding OxyContin (May 10, 2007),
<https://assets.documentcloud.org/documents/279028/purdue-guilty-plea.pdf>.

26 ³³² *Id.*

27 ³³³ *Id.*

28 ³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

through oral use. Thus, these misrepresentations wrongly reassured doctors that as long as they do not observe those signs, they need not worry that their patients are abusing or addicted to opioids.

- Purdue sponsored APF's *A Policymaker's Guide to Understanding Pain & Its Management*, which inaccurately claimed that less than 1% of children prescribed opioids will become addicted. This publication is still available online. This publication also asserted that pain is undertreated due to “misconceptions about opioid addiction.”
 - Purdue sponsored APF's *Treatment Options: A Guide for People Living with Pain* (2007), which asserted that addiction is rare and limited to extreme cases of unauthorized dose escalations, obtaining opioids from multiple sources, or theft.
 - A Purdue-funded study with a Purdue co-author claimed that “evidence that the risk of psychological dependence or addiction is low in the absence of a history of substance abuse.”³³⁷ The study relied only on the 1980 Porter-Jick letter to the editor concerning a chart review of hospitalized patients, not patients taking Purdue's long-acting, take-home opioid. Although the term “low” is not defined, the overall presentation suggests the risk is so low as not to be a worry.
 - Purdue contracted with AGS to produce a CME promoting the 2009 guidelines for the *Pharmacological Management of Persistent Pain in Older Persons*. These guidelines falsely claim that “the risks [of addiction] are exceedingly low in older patients with no current or past history of substance abuse.” None of the references in the

³³⁷ C. Peter N. Watson et al., Controlled-release oxycodone relieves neuropathic pain: a randomized controlled trial I painful diabetic neuropathy, 105 Pain 71 (2003).

1 guidelines corroborates the claim that elderly patients are less likely
2 to become addicted to opioids and the claim is, in fact, untrue. Purdue
3 was aware of the AGS guidelines' content when it agreed to provide
4 this funding, and AGS drafted the guidelines with the expectation it
5 would seek drug company funding to promote them after their
6 completion.

- 7 ○ Purdue sponsored APF's *Exit Wounds* (2009), which counseled
8 veterans that “[l]ong experience with opioids shows that people who
9 are not predisposed to addiction are very unlikely to become addicted
10 to opioid pain medications.” Although the term “very unlikely” is not
11 defined, the overall presentation suggests it is so low as not to be a
12 worry.
- 13 ○ Purdue sales representatives told prescribers that its drugs were
14 “steady state,” the implication of which was that they did not produce
15 a rush or euphoric effect, and therefore were less addictive and less
16 likely to be abused.
- 17 ○ Purdue sales representatives told prescribers that Butrans has a lower
18 abuse potential than other drugs because it was essentially
19 tamperproof and, after a certain point, patients no longer experience a
20 “buzz” from increased dosage.
- 21 ○ Advertisements that Purdue sent to prescribers stated that OxyContin
22 ER was less likely to be favored by addicts, and, therefore, less likely
23 to be abused or diverted, or result in addiction.
- 24 ○ In discussions with prescribers, Purdue sales representatives omitted
25 discussion of addiction risks related to Purdue’s drugs.

26 • Janssen:

- 27 ○ **Myth:** Opioid medications are always addictive.

1 **Fact:** Many studies show that opioids are rarely addictive when used
2 properly for the management of chronic pain.³³⁸

- 3 ○ **Myth:** Opioid doses have to get bigger over time because the body
4 gets used to them.

5 **Fact:** Unless the underlying cause of your pain gets worse (such as
6 with cancer or arthritis), you will probably remain on the same dose
7 or need only small increases over time.³³⁹

- 8 ○ “[Q]uestions of addiction,” “are often overestimated” because,
9 “[a]ccording to clinical opinion polls, true addiction occurs only in a
10 small percentage of patients with chronic pain who receive chronic
11 opioid analgesics.”³⁴⁰

12 *Other Opioid Analgesic Concerns*

13 Aside from medical issues related to opioid analgesics, there are nonmedical
14 issues that may have an impact on prescribing patterns and patient use of
15 these drugs. Practitioners are often concerned about prescribing opioid
16 analgesics due to potential legal issues and **questions of addiction**.^{15,16} By
17 the same token, patients report similar concerns about developing an
18 addiction to opioid analgesics.¹⁷ While these concerns are not without some
19 merit, it would appear that they are often overestimated. According to clinical
20 opinion polls, true addiction occurs only in a small percentage of patients
21 with chronic pain who receive chronic opioid analgesics analgesic therapy.¹⁸

- 22 ○ Janssen sponsored a patient education guide titled *Finding Relief:*
23 *Pain Management for Older Adults* (2009), which its personnel
24 reviewed and approved and which its sales force distributed. This
25 guide described a “myth” that opioids are addictive, and asserts as
26 fact that “[m]any studies show that opioids are rarely addictive when

27 ³³⁸ Finding Relief, Pain Management for Older Adults, (2009) (emphasis in
28 original).

29 ³³⁹ Finding Relief, Pain Management for Older Adults, (2009) (emphasis in
30 original).

31 ³⁴⁰ *Use of Opioid Analgesics in Pain Management*, Prescribe Responsibly,
32 <http://www.prescriberesponsibly.com/articles/opioid-pain-management> (last
33 visited Dec. 11, 2017).

1 used properly for the management of chronic pain.” Although the
2 term “rarely” is not defined, the overall presentation suggests the risk
3 is so low as not to be a worry. The language also implies that as long
4 as a prescription is given, opioid use is not a problem.

- 5 ○ Janssen contracted with AGS to produce a CME promoting the 2009
6 guidelines for the *Pharmacological Management of Persistent Pain*
7 in *Older Persons*. These guidelines falsely claim that “the risks [of
8 addiction] are exceedingly low in older patients with no current or
9 past history of substance abuse.” The study supporting this assertion
10 does not analyze addiction rates by age and, as already noted,
11 addiction remains a significant risk for elderly patients. Janssen was
12 aware of the AGS guidelines’ content when it agreed to provide this
13 funding, and AGS drafted the guidelines with the expectation it
14 would seek drug company funding to promote them after their
15 completion.
- 16 ○ Janssen provided grants to APF to distribute *Exit Wounds* (2009) to
17 veterans, which taught that “[l]ong experience with opioids shows that
18 people who are not predisposed to addiction are very unlikely to
19 become addicted to opioid pain medications.” Although the term
20 “very unlikely” is not defined, the overall presentation suggests the
21 risk is so low as not to be a worry.
- 22 ○ Janssen currently runs a website, Prescriberesponsibly.com (last
23 modified July 2, 2015), which claims that concerns about opioid
24 addiction are “overstated.”
- 25 ○ A June 2009 Nucynta Training module warns Janssen’s sales force
26 that physicians are reluctant to prescribe controlled substances like
27 Nucynta, but this reluctance is unfounded because “the risks . . . are
28 much smaller than commonly believed.”

- 1 ○ Janssen sales representatives told prescribers that its drugs were
- 2 “steady state,” the implication of which was that they did not produce
- 3 a rush or euphoric effect, and therefore were less addictive and less
- 4 likely to be abused.
- 5 ○ Janssen sales representatives told prescribers that Nucynta and
- 6 Nucynta ER were “not opioids,” implying that the risks of addiction
- 7 and other adverse outcomes associated with opioids were not
- 8 applicable to Janssen’s drugs. In truth, however, as set out in
- 9 Nucynta’s FDA-mandated label, Nucynta “contains tapentadol, an
- 10 opioid agonist and Schedule II substance with abuse liability similar
- 11 to other opioid agonists, legal or illicit.”
- 12 ○ Janssen’s sales representatives told prescribers that Nucynta’s unique
- 13 properties eliminated the risk of addiction associated with the drug.
- 14 ○ In discussions with prescribers, Janssen sales representatives omitted
- 15 discussion of addiction risks related to Janssen’s drugs.
- 16 ● Cephalon:
 - 17 ○ Cephalon sponsored and facilitated the development of a guidebook,
 - 18 *Opioid Medications and REMS: A Patient’s Guide*, which claims,
 - 19 among other things, that “patients without a history of abuse or a
 - 20 family history of abuse do not commonly become addicted to
 - 21 opioids.”
 - 22 ○ Cephalon sponsored APF’s *Treatment Options: A Guide for People*
 - 23 *Living with Pain* (2007), which taught that addiction is rare and
 - 24 limited to extreme cases of unauthorized dose escalations, obtaining
 - 25 opioids from multiple sources, or theft.
 - 26 ○ In discussions with prescribers, Cephalon sales representatives
 - 27 omitted any discussion of addiction risks related to Cephalon’s drugs.

- 1 • Endo:
- 2 ○ Opana ER was designed to be crush resistant
- 3 ○ Opana ER was crush and abuse resistant and not addictive.³⁴¹
- 4 ○ “[T]he Reformulated Opana ER as ‘designed to be’ crush
- 5 resistant.”³⁴²
- 6 ○ “[P]atients treated with prolonged opioid medicines usually do not
- 7 become addicted.”³⁴³
- 8 ○ Endo trained its sales force in 2012 that use of long-acting opioids
- 9 resulted in increased patient compliance, without any supporting
- 10 evidence.
- 11 ○ Endo’s advertisements for the 2012 reformulation of Opana ER
- 12 claimed it was designed to be crush resistant, in a way that conveyed
- 13 that it was less likely to be abused. This claim was false; the FDA
- 14 warned in a May 10, 2013 letter that there was no evidence Endo’s
- 15 design “would provide a reduction in oral, intranasal or intravenous
- 16 abuse” and Endo’s “post-marketing data submitted are insufficient to
- 17 support any conclusion about the overall or route-specific rates of
- 18 abuse.” Further, Endo instructed its sales representatives to repeat
- 19 this claim about “design,” with the intention of conveying Opana ER
- 20 was less subject to abuse.
- 21
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24 ³⁴¹ *In the Matter of Endo Health Solutions Inc. and Endo Pharmaceuticals Inc.*,
25 Assurance No. 15-228, Assurance of Discontinuance Under Executive Law
26 Section 63, Subdivision 15, at 5 (Mar. 1, 2016),
27 https://ag.ny.gov/pdfs/Endo_AOD_030116-Fully_Executed.pdf.

28 ³⁴² *Id.* at 6.

29 ³⁴³ *In the Matter of Endo Health Solutions Inc. and Endo Pharmaceuticals Inc.*,
30 Assurance No. 15-228, Assurance of Discontinuance Under Executive Law
31 Section 63, Subdivision 15, at 5 (Mar. 1, 2016),
32 https://ag.ny.gov/pdfs/Endo_AOD_030116-Fully_Executed.pdf.

- 1 ○ Endo sponsored a website, painknowledge.com, through APF and
- 2 NIPC, which claimed in 2009 that: “[p]eople who take opioids as
- 3 prescribed usually do not become addicted.” Although the term
- 4 “usually” is not defined, the overall presentation suggests the risk is
- 5 so low as not to be a worry. The language also implies that as long as
- 6 a prescription is given, opioid use will not become problematic. Endo
- 7 continued to provide funding for this website through 2012, and
- 8 closely tracked unique visitors to it.
- 9 ○ Endo sponsored a website, PainAction.com, which stated “Did you
- 10 know? Most chronic pain patients do not become addicted to the
- 11 opioid medications that are prescribed for them.”
- 12 ○ Endo sponsored CMEs published by APF’s NIPC, of which Endo
- 13 was the sole funder, titled *Persistent Pain in the Older Adult* and
- 14 *Persistent Pain in the Older Patient*. These CMEs claimed that
- 15 opioids used by elderly patients present “possibly less potential for
- 16 abuse than in younger patients[,]” which lacks evidentiary support
- 17 and deceptively minimizes the risk of addiction for elderly patients.
- 18 ○ Endo distributed an education pamphlet with the Endo logo titled
- 19 *Living with Someone with Chronic Pain*, which inaccurately
- 20 minimized the risk of addiction: “Most health care providers who
- 21 treat people with pain agree that most people do not develop an
- 22 addiction problem.”
- 23 ○ Endo distributed a patient education pamphlet edited by key opinion
- 24 leader Dr. Russell Portenoy titled *Understanding Your Pain: Taking*
- 25 *Oral Opioid Analgesics*. It claimed that “[a]ddicts take opioids for
- 26 other reasons [than pain relief], such as unbearable emotional
- 27
- 28

1 problems.” This implies that pain patients prescribed opioids will not
2 become addicted, which is unsupported and untrue.

- 3 ○ Endo contracted with AGS to produce a CME promoting the 2009
4 guidelines for the *Pharmacological Management of Persistent Pain*
5 in *Older Persons*. These guidelines falsely claim that “the risks [of
6 addiction] are exceedingly low in older patients with no current or
7 past history of substance abuse.” None of the references in the
8 guidelines corroborates the claim that elderly patients are less likely
9 to become addicted to opioids, and there is no such evidence. Endo
10 was aware of the AGS guidelines’ content when it agreed to provide
11 this funding, and AGS drafted the guidelines with the expectation it
12 would seek drug company funding to promote them after their
13 completion.
- 14 ○ Endo sales representatives told prescribers that its drugs were “steady
15 state,” the implication of which was that they did not produce a rush
16 or euphoric effect, and therefore were less addictive and less likely to
17 be abused.
- 18 ○ Endo provided grants to APF to distribute *Exit Wounds* (2009) to
19 veterans, which taught that “[l]ong experience with opioids shows
20 that people who are not predisposed to addiction are very unlikely to
21 become addicted to opioid pain medications.” Although the term
22 “very unlikely” is not defined, the overall presentation suggests that
23 the risk is so low as not to be a worry.
- 24 ○ In discussions with prescribers, Endo sales representatives omitted
25 discussion of addiction risks related to Endo’s drugs.

26 557. The RICO Marketing Defendants misrepresented that opioids
27 improved function and quality of life:

- 1 • Purdue:
- 2 ◦ “[W]e’ve discovered that the simplicity and convenience of twice-
- 3 ◦ daily dosing also enhances patient compliance with their doctor’s
- 4 ◦ instructions.”³⁴⁴

5

6 taking tablets every four to six hours. Moreover, we’ve discovered that

7 the simplicity and convenience of twice-daily dosing also enhances

8 https://www.nexis.com/results/enhdocview.do?docLinkInd=true&ersKey=23_T23962617276&format=GNBF

- 9
- 10
- 11 */27/2016*
- 12 ◦ patient compliance with their doctor’s instructions.”
- 13 ◦ Purdue ran a series of advertisements for OxyContin in 2012 in
- 14 ◦ medical journals titled “Pain vignettes,” which were case studies
- 15 ◦ featuring patients, each with pain conditions persisting over several
- 16 ◦ months, recommending OxyContin for each. One such patient,
- 17 ◦ “Paul,” is described to be a “54-year-old writer with osteoarthritis of
- 18 ◦ the hands,” and the vignettes imply that an OxyContin prescription
- 19 ◦ will help him work more effectively.
- 20 ◦ Purdue sponsored APF’s *A Policymaker’s Guide to Understanding*
- 21 ◦ *Pain & Its Management*, which inaccurately claimed that “multiple
- 22 ◦ clinical studies” have shown that opioids are effective in improving
- 23 ◦ daily function, psychological health, and health-related quality of life
- 24 ◦ for chronic pain patients.” The sole reference for the functional
- 25 ◦ improvement claim noted the absence of long-term studies and
- 26 ◦ actually stated: “For functional outcomes, the other analgesics were

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³⁴⁴ Ryan, *Description of Hell*, <http://documents.latimes.com/oxycontin-press-release-1996/>

1 significantly more effective than were opioids.” *The Policymaker’s*
 2 *Guide* is still available online.

- 3 ○ Purdue sponsored APF’s Treatment Options: A Guide for People
 4 Living with Pain (2007), which counseled patients that opioids, when
 5 used properly, “give [pain patients] a quality of life we deserve.”
 6 APF distributed 17,200 copies in one year alone, according to its
 7 2007 annual report, and the guide currently is available online.
- 8 ○ Purdue sponsored APF’s *Exit Wounds* (2009), which taught veterans
 9 that opioid medications “increase your level of functioning.” *Exit*
 10 *Wounds* also omits warnings of the risk of interactions between
 11 opioids and benzodiazepines, which would increase fatality risk.
 12 Benzodiazepines are frequently prescribed to veterans diagnosed with
 13 post-traumatic stress disorder.
- 14 ○ Purdue sponsored the FSMB’s Responsible Opioid Prescribing
 15 (2007), which taught that relief of pain itself improved patients’
 16 function. Responsible Opioid Prescribing explicitly describes
 17 functional improvement as the goal of a “long-term therapeutic
 18 treatment course.” Purdue also spent over \$100,000 to support
 19 distribution of the book.

20 • Janssen:

- 21 ○ Misrepresented that patients experienced “[s]ignificantly reduced
 22 nighttime awakenings.”³⁴⁵
- 23 ○ Misrepresented “[s]ignificant improvement in disability scores as
 24 measured by the Oswestry Disability Questionnaire and Pain
 25 Disability Index.”³⁴⁶

26
 27 ³⁴⁵ NDA 19-813 Letter from Spencer Salis, U.S. Food & Drug Administration, to
 28 Cynthia Chianese, Janssen Pharmaceutica (Mar. 30, 2000) at 2.

³⁴⁶ *Id.*

- 1 ○ Misrepresented “[s]ignificant improvement in social functioning.”
- 2 ○ Misrepresented outcome claims that were misleading because they
- 3 lacked substantial support, evidence or clinical experience and
- 4 “impl[ied] that patients will experience improved social or physical
- 5 functioning or improved work productivity when using Duragesic,”
- 6 including: “1,360 loaves . . . and counting, [w]ork, uninterrupted,
- 7 [life], uninterrupted, [g]ame, uninterrupted, [c]hronic pain relief that
- 8 supports functionality, [h]elps patients think less about their pain, and
- 9 [i]mprove[s] . . . physical and social functioning.”³⁴⁷
- 10 ○ Misrepresented that “[o]pioid analgesics, for example, have no true
- 11 ‘ceiling dose’ for analgesia and do not cause direct organ damage.”³⁴⁸

12 *Use of Opioid Analgesics in Pain Management*

13 Opioid analgesics are often the first line of treatment for many painful
14 conditions and may offer advantages over nonsteroidal anti-inflammatory
15 drugs (NSAIDs). Opioid analgesics, for example, have no true “ceiling dose”
16 for analgesia and do not cause direct organ damage; however, they do have
17 several possible side effects, including constipation, nausea, vomiting, a
decrease in sexual interest, drowsiness, and respiratory depression. With the
exception of constipation, many patients often develop tolerance to most of
the opioid analgesic-related side effects.⁸

- 18 ○ **Myth:** Opioids make it harder to function normally.
- 19 **Fact:** When used correctly for appropriate conditions, opioids may
20 make it easier for people to live normally.³⁴⁹
- 21 ○ Janssen sponsored a patient education guide titled *Finding Relief:*
22 *Pain Management for Older Adults* (2009), which its personnel
23 reviewed and approved and its sales force distributed. This guide

25 ³⁴⁷ *Id.* at 3 (internal quotations omitted).

26 ³⁴⁸ *Use of Opioid Analgesics in Pain Management*, Prescribe Responsibly,
27 <http://www.prescriberesponsibly.com/articles/opioid-pain-management> (last
visited Dec. 11, 2017).

28 ³⁴⁹ *Finding Relief*, *Pain Management for Older Adults*, (2009) (emphasis in
original).

1 features a man playing golf on the cover and lists examples of
2 expected functional improvement from opioids, like sleeping through
3 the night, returning to work, recreation, sex, walking, and climbing
4 stairs. The guide states as a “fact” that “opioids may make it easier
5 for people to live normally” (emphasis in the original). The myth/fact
6 structure implies authoritative backing for the claim that does not
7 exist. The targeting of older adults also ignored heightened opioid
8 risks in this population.

- 9 ○ Janssen sponsored, developed, and approved content of a website,
10 *Let's Talk Pain* in 2009, acting in conjunction with the APF and
11 AAPM whose participation in Let's Talk Pain Janssen financed and
12 orchestrated. This website featured an interview, which was edited by
13 Janssen personnel, claiming that opioids were what allowed a patient
14 to “continue to function,” inaccurately implying her experience
15 would be representative. This video is still available today on
16 youtube.com.
- 17 ○ Janssen provided grants to APF to distribute *Exit Wounds* to veterans,
18 which taught that opioid medications “increase your level of
19 functioning” (emphasis in the original). *Exit Wounds* also omits
20 warnings of the risk of interactions between opioids and
21 benzodiazepines, which would increase fatality risk. Benzodiazepines
22 are frequently prescribed to veterans diagnosed with post-traumatic
23 stress disorder.

24 • Cephalon:

- 25 ○ Cephalon sponsored the FSMB’s Responsible Opioid Prescribing
26 (2007), which taught that relief of pain itself improved patients’
27 function. Responsible Opioid Prescribing explicitly describes

1 functional improvement as the goal of a “long-term therapeutic
 2 treatment course.” Cephalon also spent \$150,000 to purchase copies
 3 of the book in bulk and distributed the book through its pain sales
 4 force to 10,000 prescribers and 5,000 pharmacists.

- 5 ○ Cephalon sponsored the American Pain Foundation’s *Treatment*
 6 *Options: A Guide for People Living with Pain* (2007), which taught
 7 patients that opioids when used properly “give [pain patients] a
 8 quality of life we deserve.” The *Treatment Options* guide notes that
 9 non-steroidal anti-inflammatory drugs have greater risks with
 10 prolonged duration of use, but there was no similar warning for
 11 opioids. APF distributed 17,200 copies in one year alone, according
 12 to its 2007 annual report, and the publication is currently available
 13 online.
- 14 ○ Cephalon sponsored a CME written by Dr. Webster, titled
 15 Optimizing Opioid Treatment for Breakthrough Pain, which was
 16 offered online by Medscape, LLC from September 28, 2007, through
 17 December 15, 2008. The CME taught that Cephalon’s Actiq and
 18 Fentora improve patients’ quality of life and allow for more activities
 19 when taken in conjunction with long-acting opioids.

20 ● Endo:

- 21 ○ Opana ER “will benefit patients, physicians and payers.”³⁵⁰
 22 “Patient safety is our top concern and addressing appropriate use of opioids is a responsibility
 23 that we take very seriously. We firmly believe this new formulation of Opana ER, coupled with
 24 our long-term commitment to awareness and education around appropriate use of opioids will
 25 benefit patients, physicians and payers.”

26
 27 ³⁵⁰ *FDA Approves Endo Pharmaceuticals’ Crush-Resistant Opana ER*, December
 28 12, 2011, [https://www.biospace.com/article/releases/fda-approves-endo-](https://www.biospace.com/article/releases/fda-approves-endo-pharmaceuticals-crush-resistant-pana-er-/)
 pharmaceuticals-crush-resistant-pana-er-/.

- 1 ○ “Endo distributed a pamphlet in New York and posted on its public
2 website, www.opana.com, photographs of purported Opana ER
3 patients that implied that patients can achieve higher function with
4 Opana ER.”³⁵¹
- 5 ○ Endo sponsored a website, painknowledge.com, through APF and
6 NIPC, which claimed in 2009 that with opioids, “your level of
7 function should improve; you may find you are now able to
8 participate in activities of daily living, such as work and hobbies, that
9 you were not able to enjoy when your pain was worse.” Endo
10 continued to provide funding for this website through 2012, and
11 closely tracked unique visitors to it.
- 12 ○ A CME sponsored by Endo, titled *Persistent Pain in the Older*
13 *Patient*, taught that chronic opioid therapy has been “shown to reduce
14 pain and improve depressive symptoms and cognitive functioning.”
- 15 ○ Endo distributed handouts to prescribers that claimed that use of
16 Opana ER to treat chronic pain would allow patients to perform work
17 as a chef. This flyer also emphasized Opana ER’s indication without
18 including equally prominent disclosure of the “moderate to severe
19 pain” qualification.
- 20 ○ Endo’s sales force distributed FSMB’s *Responsible Opioid*
21 *Prescribing* (2007). This book taught that relief of pain itself
22 improved patients’ function. Responsible Opioid Prescribing
23 explicitly describes functional improvement as the goal of a “long-
24 term therapeutic treatment course.”
- 25 ○ Endo provided grants to APF to distribute *Exit Wounds* to veterans,
26 which taught that opioid medications “increase your level of

27 28 ³⁵¹ *Id.* at 8.

1 functioning” (emphasis in the original). Exit Wounds also omits
 2 warnings of the risk of interactions between opioids and
 3 benzodiazepines, which would increase fatality risk. Benzodiazepines
 4 are frequently prescribed to veterans diagnosed with post-traumatic
 5 stress disorder.

6 558. The RICO Marketing Defendants misrepresented that addiction risks
 7 can be avoided or managed through screening tools and prescription guidelines:

- 8 • Purdue:
 - 9 ○ Purdue’s unbranded website, In the Face of Pain
 10 (inthefaceofpain.com) states that policies that “restrict[] access to
 11 patients with pain who also have a history of substance abuse” and
 12 “requiring special government-issued prescription forms for the only
 13 medications that are capable of relieving pain that is severe” are “at
 14 odds with” best medical practices.³⁵²
 - 15 ○ Purdue sponsored a 2012 CME program taught by a KOL titled
 16 *Chronic Pain Management and Opioid Use: Easing Fears,
 17 Managing Risks, and Improving Outcomes*. This presentation
 18 recommended that use of screening tools, more frequent refills, and
 19 switching opioids could treat a high-risk patient showing signs of
 20 potentially addictive behavior.
 - 21 ○ Purdue sponsored a 2011 webinar taught by Dr. Lynn Webster, titled
 22 *Managing Patient’s Opioid Use: Balancing the Need and Risk*. This
 23 publication taught prescribers that screening tools, urine tests, and
 24

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 26
 27 ³⁵² See In the Face of Pain Fact Sheet: Protecting Access to Pain Treatment, Purdue
 28 Pharma L.P. (Resources verified Mar. 2012),
www.inthefaceofpain.com/content/uploads/2011/12/factsheet_ProtectingAccess.pdf.

1 patient agreements have the effect of preventing “overuse of
2 prescriptions” and “overdose deaths.”

- 3 ○ Purdue sales representatives told prescribers that screening tools can
4 be used to select patients appropriate for opioid therapy and to
5 manage the risks of addiction.

6 • Cephalon:

- 7 ○ Cephalon sponsored APF’s *Treatment Options: A Guide for People*
8 *Living with Pain* (2007), which taught patients that “opioid
9 agreements” between doctors and patients can “ensure that you take
10 the opioid as prescribed.”

11 • Endo:

- 12 ○ Endo paid for a 2007 supplement³⁵³ available for continuing
13 education credit in the Journal of Family Practice and written by a
14 doctor who later became a member of Endo’s speakers bureau. This
15 publication, titled *Pain Management Dilemmas in Primary Care: Use of Opioids*, recommended screening patients using tools like the
16 Opioid Risk Tool or the Screener and Opioid Assessment for Patients
17 with Pain, and advised that patients at high risk of addiction could
18 safely (e.g., without becoming addicted) receive chronic opioid
19 therapy using a “maximally structured approach” involving
20 toxicology screens and pill counts.

22 559. The RICO Marketing Defendants misrepresented that signs of opioid
23 addiction were not addiction, withdrawal could be simply managed, and promoted
24 the concept of pseudoaddiction:

25 • Purdue:

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28 ³⁵³ The Medical Journal, *The Lancet* found that all of the supplement papers it received failed peer-review. Editorial, “*The Perils of Journal and Supplement Publishing*,” 375 *The Lancet* 9712 (347) 2010.

- 1 o Purdue published a prescriber and law enforcement education
2 pamphlet in 2011 entitled *Providing Relief, Preventing Abuse*, which
3 described pseudoaddiction as a concept that “emerged in the
4 literature to describe the inaccurate interpretation of [drug-seeking
5 behaviors] in patients who have pain that has not been effectively
6 treated.”
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**WHAT SHOULD I KNOW ABOUT
OPIOIDS AND ADDICTION?**

You or your family may have questions about addiction. It is important to understand what addiction is. Addiction **IS** a chronic brain disease that can occur in some people exposed to certain substances such as alcohol, cocaine, and opioids. Taking opioids for pain relief is not addiction. People addicted to opioids crave the opioid and use it regularly for reasons other than pain relief.

Addiction **IS NOT** when a person develops "withdrawal" (such as abdominal cramping or sweating) after the medicine is stopped quickly or the dose is reduced by a large amount. Your doctor will avoid stopping your medication suddenly by slowly reducing the amount of opioid you take before the medicine is completely stopped. Addiction also **IS NOT** what happens when some people taking opioids need to take a higher dose after a period of time in order for it to continue to relieve their pain. This normal "tolerance" to opioid medications doesn't affect everyone who takes them and does not, by itself, imply addiction. If tolerance does occur, it does not mean you will "run out" of pain relief. Your dose can be adjusted or another medicine can be prescribed.

- Purdue distributed to physicians, at least as of November 2006 and posted on its unbranded website, Partners Against Pain, a pamphlet copyrighted 2005 and titled *Clinical Issues in Opioid Prescribing*. This pamphlet included a list of conduct including "illicit drug use and deception" it defined as indicative of pseudoaddiction or untreated pain. It also states: "Pseudoaddiction is a term which has been used to describe patient behaviors that may occur when pain is undertreated. . . . Even such behaviors as illicit drug use and deception can occur in the patient's efforts to obtain relief. Pseudoaddiction can be distinguished from true addiction in that the behaviors resolve when the pain is effectively treated."
- Purdue sponsored FSMB's *Responsible Opioid Prescribing* (2007), which taught that behaviors such as "requesting drugs by name,

1 “demanding or manipulative behavior,” seeing more than one doctor
2 to obtain opioids, and hoarding, are all signs of pseudoaddiction.
3 Purdue also spent over \$100,000 to support distribution of the book.

- 4 o Purdue sponsored APF’s *A Policymaker’s Guide to Understanding*
5 *Pain & Its Management*, which states: “Pseudo-addiction describes
6 patient behaviors that may occur when pain is undertreated. . . .
7 Pseudo-addiction can be distinguished from true addiction in that this
8 behavior ceases when pain is effectively treated.”
9 o *A Policymaker’s Guide to Understanding Pain & Its Management*
10 also taught that “Symptoms of physical dependence can often be
11 ameliorated by gradually decreasing the dose of medication during
12 discontinuation,” but did not disclose the significant hardships that
13 often accompany cessation of use.
14 o Purdue sales representatives told prescribers that the effects of
15 withdrawal from opioid use can be successfully managed.
16 o Purdue sales representatives told prescribers that the potential for
17 withdrawal on Butrans was low due to Butrans’ low potency and its
18 extended release mechanism.

19 • Janssen:

- 20 o Janssen’s website, Let’s Talk Pain, stated from 2009 through 2011
21 that “pseudoaddiction . . . refers to patient behaviors that may occur
22 when pain is under-treated” and “[p]seudoaddiction is different from
23 true addiction because such behaviors can be resolved with effective
24 pain management.”
25 o A Janssen PowerPoint presentation used for training its sales
26 representatives titled “*Selling Nucynta ER*” indicates that the “low
27 incidence of withdrawal symptoms” is a “core message” for its sales
28

1 force. This message is repeated in numerous Janssen training
2 materials between 2009 and 2011. The studies supporting this claim
3 did not describe withdrawal symptoms in patients taking Nucynta ER
4 beyond 90 days or at high doses and would therefore not be
5 representative of withdrawal symptoms in the chronic pain
6 population. Patients on opioid therapy long-term and at high doses
7 will have a harder time discontinuing the drugs and are more likely to
8 experience withdrawal symptoms. In addition, in claiming a low rate
9 of withdrawal symptoms, Janssen relied upon a study that only began
10 tracking withdrawal symptoms in patients two to four days after
11 discontinuing opioid use, when Janssen knew or should have known
12 that these symptoms peak earlier than that for most patients. Relying
13 on data after that initial window painted a misleading picture of the
14 likelihood and severity of withdrawal associated with chronic opioid
15 therapy. Janssen also knew or should have known that the patients
16 involved in the study were not on the drug long enough to develop
17 rates of withdrawal symptoms comparable to rates of withdrawal
18 suffered by patients who use opioids for chronic pain—the use for
19 which Janssen promoted Nucynta ER.

- 20 ○ Janssen sales representatives told prescribers that patients on
21 Janssen's drugs were less susceptible to withdrawal than those on
22 other opioids.

23 ● Cephalon:

- 24 ○ Cephalon sponsored FSMB's Responsible Opioid Prescribing (2007),
25 which taught that behaviors such as "requesting drugs by name,"
26 "demanding or manipulative behavior," seeing more than one doctor
27 to obtain opioids, and hoarding are all signs of pseudoaddiction.

1 Cephalon also spent \$150,000 to purchase copies of the book in bulk
 2 and distributed it through its pain sales force to 10,000 prescribers
 3 and 5,000 pharmacists.

4 • Endo:

- 5 ○ Endo distributed copies of a book by KOL Dr. Lynn Webster entitled
 6 *Avoiding Opioid Abuse While Managing Pain* (2007). Endo's internal
 7 planning documents describe the purpose of distributing this book as
 8 to “[i]ncrease the breadth and depth of the Opana ER prescriber
 9 base.” The book claims that when faced with signs of aberrant
 10 behavior, the doctor should regard it as pseudoaddiction and thus,
 11 increasing the dose in most cases . . . should be the clinician’s first
 12 response.”
- 13 ○ Endo spent \$246,620 to buy copies of FSMB’s *Responsible Opioid*
 14 *Prescribing* (2007), which was distributed by Endo’s sales force.
 15 This book asserted that behaviors such as “requesting drugs by
 16 name,” “demanding or manipulative behavior,” seeing more than one
 17 doctor to obtain opioids, and hoarding, are all signs of
 18 “pseudoaddiction.”
- 19 ○ A CME sponsored by Endo, titled *Persistent Pain in the Older Adult*,
 20 taught that withdrawal symptoms can be avoided entirely by tapering
 21 the dose by 10-20% per day for ten days.
- 22 ○ Endo misrepresented that “symptoms of withdrawal do not indicate
 23 addiction.”³⁵⁴

27 ³⁵⁴ *In the Matter of Endo Health Solutions Inc. and Endo Pharmaceuticals Inc.*,
 Assurance No. 15-228, Assurance of Discontinuance Under Executive Law
 28 Section 63, Subdivision 15, at 7 (Mar. 1, 2016),
https://ag.ny.gov/pdfs/Endo_AOD_030116-Fully_Executed.pdf.

- 1 ○ “Endo also trained its sales representatives to distinguish addiction
2 from ‘pseudoaddiction.’”³⁵⁵

3 560. The RICO Defendants misrepresented that opioids were safe for the
4 long-term treatment of chronic, non-acute, and non-cancer pain:

5 • Purdue:

- 6 ○ “[W]e do not want to niche OxyContin just for cancer pain.”³⁵⁶

7 three tablet strengths were passed around. OxyContin will be indicated for the relief
8 of pain with the convenience of q12h dosing. OxyContin’s primary market positioning
9 will be for cancer pain and the secondary market will be for non-malignant pain
(musculoskeletal, injury and trauma). It was reinforced that we do not want to niche
OxyContin just for cancer pain. OxyContin will be positioned into Step 2 of the
WHO Analgesic Ladder.

- 10 ○ OxyContin was safe and non-addictive when using extended release
11 formulations, and appropriate for use in non-cancer patients.³⁵⁷
12 ○ OxyContin should be prescribed not merely for severe short-term
13 pain associated with surgery or cancer, but also for less acute, longer-
14 lasting pain like arthritis, back pain, sports injuries, fibromyalgia with
15 almost limitless treatment potential.³⁵⁸

16 • Janssen:

- 17 ○ Duragesic was “more useful in a broader range of conditions or
18 patients than has been demonstrated by substantial evidence.”³⁵⁹

21 ³⁵⁵ *Id.*

22 ³⁵⁶ Ryan, *Description of Hell*, <http://documents.latimes.com/oxycontin-launch-1995/> (emphasis in the L.A. Times document).

23 ³⁵⁷ Charles Ornstein & Tracy Weber, *American Pain Foundation Shuts Down as*
24 *Senators Launch Investigation of Prescription Narcotics*, ProPublica (May 8,
2012, 8:57 PM),
http://www.opb.org/news/article/america_pain_foundation_shuts_down_as_senators_launch_investigation_of_prescription_narcotics/ (hereinafter “Ornstein,
American Pain Foundation”).

26 ³⁵⁸ Patrick Keefe, *The Family that Built an Empire of Pain*, New Yorker (Oct. 30,
27 2017), <https://www.newyorker.com/magazine/2017/10/30/the-family-that-built-an-empire-of-pain>

28 ³⁵⁹ NDA 19-813 Letter from Spencer Salis, U.S. Food & Drug Administration, to
Cynthia Chianese, Janssen Pharmaceutica (Mar. 30, 2000) at 2.

- 1 ○ Duragesic was “not just for end stage cancer anymore” when the
- 2 FDA only approved Duragesic for “the management of chronic pain
- 3 in patients who require continuous opioid analgesia for pain that
- 4 cannot be managed by lesser means.”³⁶⁰
- 5 ○ Misrepresented that “Duragesic can be used for any type of pain
- 6 management” despite the fact that the FDA approved warning stated
- 7 that “BECAUSE SERIOUS OR LIFE-THREATENING
- 8 HYPOVENTILATION COULD OCCUR, DURAGESIC®
- 9 (FENTANYL TRANSDERMAL SYSTEM) IS
- 10 CONTRAINDICATED: In the management of acute or post-
- 11 operative pain, including use in outpatient surgeries . . . ”³⁶¹
- 12 ○ Misrepresented “numerous claims for the efficacy and safety of
- 13 Duragesic,” but failed to “present[] any risk information concerning
- 14 the boxed warnings, contraindications, warnings, or side effects
- 15 associated with Duragesic’s use . . . [and] . . . fail[ed] to address
- 16 important risks and restrictions associated with Duragesic
- 17 therapy.”³⁶²
- 18 ○ Misrepresented “[d]emonstrated effectiveness in chronic back pain
- 19 with additional patient benefits, . . . 86% of patients experienced
- 20 overall benefit in a clinical study based on: pain control, disability in
- 21 ADLs, quality of sleep.”³⁶³

22 • Cephalon:

26 ³⁶⁰ *Id.*

27 ³⁶¹ *Id.*

28 ³⁶² *Id.*

³⁶³ *Id.* at 2-3.

- 1 ○ “[P]romoting [Actiq] for non-cancer patients to use for such maladies
- 2 as migraines, sickle-cell pain crises, injuries, and in anticipation of
- 3 changing wound dressings or radiation therapy.”³⁶⁴
- 4 ○ “[P]romot[ing] Actiq for use in patients who were not yet opioid
- 5 tolerant, and for whom it could have life-threatening results.”³⁶⁵
- 6 ○ In 2011, Cephalon wrote an article titled “2011 Special Report: An
- 7 Integrated Risk Evaluation and Risk Mitigation Strategy for Fentanyl
- 8 Buccal Tablet (FENTORA®) AND Oral Transmucosal Fentanyl
- 9 Citrate (Actiq®), published in Pain Medicine News. Plaintiffs are
- 10 informed and believe that Cephalon misrepresented that its drugs
- 11 were “shown to be effective in treatment of [break through pain]
- 12 associated with multiple causes of pain,” not just cancer.

13 561. The RICO Defendants also misrepresented that opioids were safer
14 than non-opioid analgesics because there is no ceiling dose for opioid treatment.

15 • Purdue:

- 16 ○ Purdue’s In the Face of Pain website, along with initiatives of APF,
- 17 promoted the notion that if a patient’s doctor does not prescribe them
- 18 what—in their view—is a sufficient dose of opioids, they should find
- 19 another doctor who will. In so doing, Purdue exerted undue, unfair,
- 20 and improper influence over prescribers who face pressure to accede
- 21 to the resulting demands.
- 22 ○ Purdue sponsored APF’s *A Policymaker’s Guide to Understanding*
- 23 *Pain & Its Management*, which taught that dose escalations are
- 24 “sometimes necessary,” even indefinitely high ones, which suggested

26 ³⁶⁴ Press Release, U.S. Department of Justice, Pharmaceutical Company Cephalon
27 To Pay \$425 Million For Off-Label Drug Marketing (Sept. 29, 2008),
28 <https://www.justice.gov/archive/usao/pae/News/2008/sep/cephalonrelease.pdf>.

³⁶⁵ *Id.*

1 that high dose opioids are safe and appropriate and did not disclose
2 the risks from high dose opioids. This publication is still available
3 online.

- 4 ○ Purdue sponsored APF's *Treatment Options: A Guide for People*
5 *Living with Pain* (2007), which taught patients that opioids have "no
6 ceiling dose" and are therefore the most appropriate treatment for
7 severe pain. The guide also claimed that some patients "need" a
8 larger dose of the drug, regardless of the dose currently prescribed.
9 This language fails to disclose heightened risks at elevated doses.
- 10 ○ *Treatment Options*, also taught that opioids differ from NSAIDs in
11 that they have "no ceiling dose" and are therefore the most
12 appropriate treatment for severe pain. *Treatment Options* continued,
13 warning that risks of NSAIDs increase if "taken for more than a
14 period of months," with no corresponding warning about opioids.
15 The publication attributed 10,000 to 20,000 deaths annually to
16 NSAID overdose.
- 17 ○ Purdue sponsored a CME issued by the American Medical
18 Association in 2003, 2007, 2010, and 2013. The CME, *Overview of*
19 *Management Options*, was edited by KOL Dr. Russell Portenoy,
20 among others, and taught that other drugs, but not opioids, are unsafe
21 at high doses. The 2013 version is still available for CME credit.
- 22 ○ *Overview of Management Options* also taught NSAIDs and other
23 drugs, but not opioids, are unsafe at high doses.
- 24 ○ Purdue sponsored APF's *Exit Wounds* (2009), which omits warnings
25 of the risk of interactions between opioids and benzodiazepines,
26 which would increase fatality risk. *Exit Wounds* also contained a

lengthy discussion of the dangers of using alcohol to treat chronic pain but did not disclose dangers of mixing

- Purdue sales representatives told prescribers that opioids were just as effective for treating patients long-term and omitted any discussion that increased tolerance would require increasing, and increasingly dangerous, doses.
- Purdue sales representatives told prescribers that NSAIDs were more toxic than opioids.

• Janssen:

- Janssen sponsored a patient education guide entitled *Finding Relief: Pain Management for Older Adults* (2009), which its personnel reviewed and approved and its sales force distributed. This guide listed dose limitations as “disadvantages” of other pain medicines but omitted any discussion of risks of increased doses from opioids. The publication also falsely claimed that it is a “myth” that “opioid doses have to be bigger over time.”
- *Finding Relief: Pain Management for Older Adults* also described the advantages and disadvantages of NSAIDs on one page, and the “myths/facts” of opioids on the facing page. The disadvantages of NSAIDs are described as involving “stomach upset or bleeding,” “kidney or liver damage if taken at high doses or for a long time,” “adverse reactions in people with asthma,” and “can increase the risk of heart attack and stroke.” The only adverse effects of opioids listed are “upset stomach or sleepiness,” which the brochure claims will go away, and constipation.
- Janssen sponsored APF’s *Exit Wounds* (2009), which omits warnings of the risk of interactions between opioids and benzodiazepines.

1 Janssen's label for Duragesic, however, states that use with
2 benzodiazepines "may cause respiratory depression, [low blood
3 pressure], and profound sedation or potentially result in coma. Exit
4 Wounds also contained a lengthy discussion of the dangers of using
5 alcohol to treat chronic pain but did not disclose dangers of mixing
6 alcohol and opioids.

- 7 ○ Janssen sales representatives told prescribers that Nucynta was not an
8 opioid, making it a good choice for chronic pain patients who
9 previously were unable to continue opioid therapy due to excessive
10 side effects. This statement was misleading because Nucynta is an
11 opioid and has the same effects as other opioids.

12 ● Cephalon:

- 13 ○ Cephalon sponsored APF's *Treatment Options: A Guide for People*
14 *Living with Pain* (2007), which claims that some patients "need" a
15 larger dose of their opioid, regardless of the dose currently
16 prescribed.
- 17 ○ *Treatment Options*, also taught patients that opioids differ from
18 NSAIDs in that they have "no ceiling dose" and are therefore the
19 most appropriate treatment for severe pain. *Treatment Options*
20 continued, warning that risks of NSAIDs increase if "taken more than
21 a period of months." With no corresponding warning about opioids.
22 The publication attributed 10,000 to 20,000 deaths annually to
23 NSAID overdose.
- 24 ○ Cephalon sponsored a CME written by KOL Dr. Lynn Webster,
25 *Optimizing Opioid Treatment for Breakthrough Pain*, which was
26 offered online by Medscape, LLC from September 28, 2007 through
27 December 15, 2008. The CME taught that non-opioid analgesics and

1 combination opioids that include aspirin and acetaminophen are less
2 effective to treat breakthrough pain because of dose limitations.

- 3 ○ Cephalon sales representatives assured prescribers that opioids were
4 safe, even at high doses.
5 ○ Cephalon sales representatives told prescribers that NSAIDs were
6 more toxic than opioids.
7 ○ “[P]romot[ing] Actiq for use in patients who were not yet opioid
8 tolerant, and for whom it could have life-threatening results.”³⁶⁶

9 ● Endo:

- 10 ○ Endo sponsored a website, painknowledge.com, through APF and
11 NIPC, which claimed in 2009 that opioids may be increased until
12 “you are on the right dose of medication for your pain,” and once that
13 occurs, further dose increases would not occur. Endo funded the site,
14 which was a part of Endo’s marketing plan, and tracked visitors to it.
15 ○ Through painknowledge.com Endo distributed a flyer called “Pain:
16 Opioid Therapy.” This publication included a list of adverse effects
17 from opioids that omitted significant adverse effects like
18 hyperalgesia, immune and hormone dysfunction, cognitive
19 impairment, tolerance, dependence, addiction, and death. Endo
20 continued to provide funding for this website through 2012, and
21 closely tracked unique visitors to it.
22 ○ Endo provided grants to APF to distribute Exit Wounds (2009),
23 which omitted warnings of the risk of interactions between opioids
24 and benzodiazepines, which would increase fatality risk. Exit
25 Wounds also contained a lengthy discussion of the dangers of using

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³⁶⁶ *Id.*

alcohol to treat chronic pain but did not disclose dangers of mixing alcohol and opioids.

- Endo sales representatives told prescribers that NSAIDs were more toxic than opioids.
 - Endo distributed a patient education pamphlet edited by KOL Dr. Russell Portenoy titled *Understanding Your Pain: Taking Oral Opioid Analgesics*. In Q&A format, it asked: “If I take the opioid now, will it work later when I really need it?” The response was: “The dose can be increased . . . You won’t ‘run out’ of pain relief.”
 - Endo distributed a “case study” to prescribers titled *Case Challenges in Pain Management: Opioid Therapy for Chronic Pain*. The study cites an example, meant to be representative, of a patient “with a massive upper gastrointestinal bleed believed to be related to his protracted use of NSAIDs” (over eight years), and recommends treating with opioids instead.

562. These misrepresentations, and the legion of other representations made by the RICO Defendants and members of Opioid Marketing Enterprise all furthered the common purpose and fraudulent scheme of the Opioid Marketing Enterprise. But they were demonstrably false, as confirmed by investigations and enforcement actions against the RICO Marketing Defendants.

563. In May 2007, Purdue and three of its executives pled guilty to federal charges of misbranding OxyContin in what the company acknowledged was an attempt to mislead doctors about the risk of addiction. Purdue was ordered to pay \$600 million in fines and fees. In its plea, Purdue admitted that its promotion of OxyContin was misleading and inaccurate, misrepresented the risk of addiction and was unsupported by science. The Order adopting the guilty pleas provide:

effects than immediate-release opioids resulting in less euphoria and less potential for abuse than short-acting opioids;

- d. Told certain health care providers that patients could stop therapy abruptly without experiencing withdrawal symptoms and that patients who took OxyContin would not develop tolerance to the drug; and
 - e. Told certain health care providers that OxyContin did not cause a “buzz” or euphoria, caused less euphoria, had less addiction potential, had less abuse potential, was less likely to be diverted than immediate-release opioids, and could be used to “weed out” addicts and drug seekers.

(Information ¶ 19.) Purdue has agreed that these facts are true, and the individual defendants, while they do not agree that they had knowledge of these things, have agreed that the court may accept these facts in support of their guilty pleas. (Agreed Statement of Facts ¶ 46.)

564. Additionally, Michael Friedman (“Friedman”), the company’s president, pled guilty to a misbranding charge and agreed to pay \$19 million in fines; Howard R. Udell (“Udell”), Purdue’s top lawyer, also pled guilty and agreed to pay \$8 million in fines; and Paul D. Goldenheim (“Goldenheim”), its former medical director, pled guilty as well and agreed to pay \$7.5 million in fines.³⁶⁷

565. In a statement announcing the guilty plea, John Brownlee (“Brownlee”), the U.S. Attorney for the Western District of Virginia, stated:

Purdue claimed it had created the miracle drug – a low risk drug that could provide long acting pain relief but was less addictive and less subject to abuse. Purdue’s marketing campaign worked, and sales for OxyContin skyrocketed – making billions for Purdue and millions for its top executives.

But OxyContin offered no miracles to those suffering in pain. Purdue's claims that OxyContin was less addictive and less subject to abuse and diversion were false – and Purdue knew its claims were false. The result of their misrepresentations and crimes sparked one of

367 *Id.*

1 our nation's greatest prescription drug failures. . . . OxyContin was the
2 child of marketers and bottom line financial decision making.³⁶⁸

3 566. Brownlee characterized Purdue's criminal activity as follows:
4

5 First, Purdue trained its sales representatives to falsely inform
6 health care providers that it was more difficult to extract the
7 oxycodone from an OxyContin tablet for the purpose of intravenous
8 abuse. Purdue ordered this training even though its own study showed
9 that a drug abuser could extract approximately 68% of the oxycodone
10 from a single 10 mg OxyContin tablet by simply crushing the tablet,
11 stirring it in water, and drawing the solution through cotton into a
12 syringe.

13 Second, Purdue falsely instructed its sales representatives to
14 inform health care providers that OxyContin could create fewer
15 chances for addiction than immediate-release opioids.

16 Third, Purdue sponsored training that falsely taught Purdue
17 sales supervisors that OxyContin had fewer "peak and trough" blood
18 level effects than immediate-release opioids resulting in less euphoria
19 and less potential for abuse than short-acting opioids.

20 Fourth, Purdue falsely told certain health care providers that
21 patients could stop therapy abruptly without experiencing withdrawal
22 symptoms and that patients who took OxyContin would not develop
23 tolerance to the drug.

24 And fifth, Purdue falsely told health care providers that
25 OxyContin did not cause a "buzz" or euphoria, caused less euphoria,
26 had less addiction potential, had less abuse potential, was less likely to
27 be diverted than immediate-release opioids, and could be used to
28 "weed out" addicts and drug seekers.³⁶⁹

29 567. Purdue pled guilty to illegally misbranding OxyContin in an effort to
30 mislead and defraud physicians and consumers, while Friedman, Udell and
31 Goldenheim pled guilty to the misdemeanor charge of misbranding OxyContin for
32 introducing misbranded drugs into interstate commerce in violation of 21 U.S.C.
33 §§ 331(a), 333(a)(1)-(2) and 352(a).

34 568. Similarly, Endo's marketing of Purdue was criticized and punished
35 by the FDA and New York Attorney General.

368 Press Release, U.S. Attorney for the Western District of Virginia, Statement of
37 United States Attorney John Brownlee on the Guilty Plea of the Purdue Frederick
38 Company and Its Executives for Illegally Misbranding OxyContin (May 10, 2007),
39 <https://assets.documentcloud.org/documents/279028/purdue-guilty-plea.pdf>.

40 ³⁶⁹ *Id.*

1 569. On February 18, 2017, the State of New York announced a
 2 settlement with Endo requiring it “to cease all misrepresentations regarding the
 3 properties of Opana ER [and] to describe accurately the risk of addiction to Opana
 4 ER.”³⁷⁰ In the Assurance of Discontinuance that effectuated the settlement, the
 5 State of New York stated that Endo knew about the risks arising from the
 6 reformulated Opana ER even before it received FDA approval. Among other
 7 things, the investigation concluded that:

- 8 • Endo improperly marketed Opana ER as designed to be crush resistant,
 when Endo’s own studies dating from 2009 and 2010 showed that the pill
 10 could be crushed and ground;
- 11 • Endo improperly instructed its sales representatives to diminish and distort
 the risks associated with Opana ER, including the serious danger of
 13 addiction; and
- 14 • Endo made unsupported claims comparing Opana ER to other opioids and
 failed to disclose accurate information regarding studies addressing the
 16 negative effects of Opana ER.³⁷¹

17 570. The 2017 settlement also identified and discussed a February 2013
 18 communication from a consultant hired by Endo to the company, in which the
 19 consultant concluded that “[t]he initial data presented do not necessarily establish
 20 that the reformulated Opana ER is tamper resistant.” The same consultant also
 21 reported that the distribution of the reformulated Opana ER had already led to
 22 higher levels of abuse of the drug via injection.³⁷²

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 25 ³⁷⁰ Press Release, Attorney General Eric T. Schneiderman, A.G. Schneiderman
 26 Announces Settlement With Endo Health Solutions Inc. & Endo Pharmaceuticals
 27 Inc. Over Marketing Of Prescription Opioid Drugs (Mar. 3, 2016),
 28 <https://ag.ny.gov/press-release/ag-schneiderman-announces-settlement-endo-health-solutions-inc-endo-pharmaceuticals> (last accessed on March 9, 2018).

³⁷¹ *Id.*

³⁷² *Id.* at 6.

1 571. The Office of the Attorney General of New York also revealed that
2 the “managed care dossier” Endo provided to formulary committees of healthcare
3 plans and pharmacy benefit managers misrepresented the studies that had been
4 conducted on Opana ER. According to Endo’s vice president for
5 pharmacovigilance and risk management, the dossier was presented as a complete
6 compendium of all research on the drug. However, it omitted certain studies:
7 Study 108 (completed in 2009) and Study 109 (completed in 2010), which showed
8 that reformulated Opana ER could be ground and chewed.

9 572. The settlement also detailed Endo’s false and misleading
10 representations about the non-addictiveness of opioids and Opana. For example,
11 until April 2012, Endo’s website for the drug, www.opana.com, contained the
12 following representation: ““Most healthcare providers who treat patients with pain
13 agree that patients treated with prolonged opioid medicines usually do not become
14 addicted.””³⁷³ However, Endo neither conducted nor possessed a survey
15 demonstrating that most healthcare providers who treat patients with pain agree
16 with that representation.

17 573. The Office of the Attorney General of New York also disclosed the
18 following facts that it determined to violate Opana’s obligations to truthfully
19 market its products:

20 a. Training materials provided by Endo to sales
21 representatives stated: ““Symptoms of withdrawal do not
22 indicate addiction.””³⁷⁴ This representation is inconsistent with
23 the diagnosis of opioid-use disorder as provided in the
24 Diagnostic and Statistical Manual of Mental Disorders by the
25 American Psychiatric Association (Fifth Edition).

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³⁷³ *Id.*

³⁷⁴ *Id.* at 7.

b. Endo trained its sales representatives to falsely distinguish addiction from “pseudoaddiction,” which it defined as a condition in which patients exhibit drug-seeking behavior that resembles but is not the same as addiction. Endo’s vice president for pharmacovigilance and risk management testified that he was not aware of any research validating the concept of pseudoaddiction.

8 574. On June 9, 2017, the FDA asked Endo to voluntarily cease sales of
9 Opana ER after determining that the risks associated with its abuse outweighed
10 the benefits. According to Dr. Janet Woodcock, director of the FDA's Center for
11 Drug Evaluation and Research, the risks include "several serious problems,"
12 including "outbreaks of HIV and Hepatitis C from sharing the drug after it was
13 extracted by abusers" and ""a serious disease outbreak."³⁷⁵ If Endo did not
14 comply, the FDA stated that it "intends to take steps to formally require its
15 removal by withdrawing approval."³⁷⁶

16 575. Like Purdue and Endo, Janssen was the subject of an FDA
17 enforcement action that identified its marketing statements as misrepresentations.
18 For example:

19 576. On February 15, 2000, the FDA sent Janssen a letter concerning the
20 alleged dissemination of “homemade” promotional pieces that promoted
21 Duragesic in violation of the Federal Food, Drug, and Cosmetic Act. In a
22 subsequent letter, dated March 30, 2000, the FDA explained that the “homemade”
23 promotional pieces were “false or misleading because they contain

³⁷⁵ FDA requests removal of Opana ER for risks related to abuse, June 8, 2017, <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm562401.htm>.

28 | 376 *Id.*

1 misrepresentations of safety information, broaden Duragesic's indication, contain
2 unsubstantiated claims, and lack fair balance.”³⁷⁷

3 577. The March 30, 2000 letter identified specific violations, including
4 misrepresentations that Duragesic had a low potential for abuse:

5 You present the claim, “Low abuse potential!” This claim suggests
6 that Duragesic has less potential for abuse than other currently
7 available opioids. However, this claim has not been demonstrated by
8 substantial evidence. Furthermore, this claim is contradictory to
9 information in the approved product labeling (PI) that states,
“Fentanyl is a Schedule II controlled substance and can produce drug
dependence similar to that produced by morphine.” Therefore, this
claim is false or misleading.³⁷⁸

10 578. The March 30, 2000 letter also stated that the promotional materials
11 represented that Duragesic was “more useful in a broader range of conditions or
12 patients than has been demonstrated by substantial evidence.”³⁷⁹ Specifically, the
13 FDA stated that Janssen was marketing Duragesic for indications other than the
14 treatment of chronic pain that cannot otherwise be managed, for which it was
15 approved:

16 You present the claim, “It’s not just for end stage cancer anymore!”
17 This claim suggests that Duragesic can be used for any type of pain
18 management. However, the PI for Duragesic states, “Duragesic
19 (fentanyl transdermal system) is indicated in the management of
20 chronic pain in patients who require continuous opioid analgesia for
21 pain that cannot be managed by lesser means . . .” Therefore, the
22 suggestion that Duragesic can be used for any type of pain
23 management promotes Duragesic[] for a much broader use than is
24 recommended in the PI, and thus, is misleading. In addition, the
25 suggestion that Duragesic can be used to treat any kind of pain is
26 contradictory to the boxed warning in the PI. Specifically, the PI
states,

27 BECAUSE SERIOUS OR LIFE-THREATENING
28 HYPOVENTILATION COULD OCCUR, DURAGESIC®
(FENTANYL TRANSDERMAL SYSTEM) IS
CONTRAINdICATED:

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27 ³⁷⁷ NDA 19-813 Letter from Spencer Salis, U.S. Food & Drug Administration, to
Cynthia Chianese, Janssen Pharmaceutica (Mar. 30, 2000) at 2.

28 ³⁷⁸ *Id.*

³⁷⁹ *Id.*

1 In the management of acute or post-operative pain, including use in
 2 outpatient surgeries³⁸⁰

3 579. The March 30, 2000 letter also stated Janssen failed to adequately
 4 present “contraindications, warnings, precautions, and side effects with a
 5 prominence and readability reasonably comparable to the presentation of
 6 information relating to the effectiveness of the product.”³⁸¹

7 580. On February 15, 2000, the FDA sent Janssen a letter concerning the
 8 alleged dissemination of “homemade” promotional pieces that promoted
 9 Duragesic in violation of the Federal Food, Drug, and Cosmetic Act. In a
 10 subsequent letter, dated March 30, 2000, the FDA explained that the “homemade”
 11 promotional pieces were “false or misleading because they contain
 12 misrepresentations of safety information, broaden Duragesic’s indication, contain
 13 unsubstantiated claims, and lack fair balance.”³⁸²

14 581. The March 30, 2000 letter identified specific violations, including
 15 misrepresentations that Duragesic had a low potential for abuse:

16 You present the claim, “Low abuse potential!” This claim suggests
 17 that Duragesic has less potential for abuse than other currently
 18 available opioids. However, this claim has not been demonstrated by
 19 substantial evidence. Furthermore, this claim is contradictory to
 20 information in the approved product labeling (PI) that states,
 21 “Fentanyl is a Schedule II controlled substance and can produce drug
 22 dependence similar to that produced by morphine.” Therefore, this
 23 claim is false or misleading.³⁸³

24 582. The March 30, 2000 letter also stated that the promotional materials
 25 represented that Duragesic was “more useful in a broader range of conditions or
 26 patients than has been demonstrated by substantial evidence.”³⁸⁴ Specifically, the
 27 FDA stated that Janssen was marketing Duragesic for indications other than the
 28

25 ³⁸⁰ *Id.* at 2-3.

26 ³⁸¹ *Id.* at 3 (emphasis in original).

27 ³⁸² NDA 19-813 Letter from Spencer Salis, U.S. Food & Drug Administration, to
 28 Cynthia Chianese, Janssen Pharmaceutica (Mar. 30, 2000) at 2.

³⁸³ *Id.*

³⁸⁴ *Id.*

1 treatment of chronic pain that cannot otherwise be managed, for which it was
2 approved:

3 You present the claim, "It's not just for end stage cancer anymore!"
4 This claim suggests that Duragesic can be used for any type of pain
5 management. However, the PI for Duragesic states, "Duragesic
6 (fentanyl transdermal system) is indicated in the management of
7 chronic pain in patients who require continuous opioid analgesia for
8 pain that cannot be managed by lesser means . . ." Therefore, the
9 suggestion that Duragesic can be used for any type of pain
management promotes Duragesic[] for a much broader use than is
recommended in the PI, and thus, is misleading. In addition, the
suggestion that Duragesic can be used to treat any kind of pain is
contradictory to the boxed warning in the PI. Specifically, the PI
states,

10 BECAUSE SERIOUS OR LIFE-THREATENING
11 HYPOVENTILATION COULD OCCUR, DURAGESIC®
12 (FENTANYL TRANSDERMAL SYSTEM) IS
13 CONTRAINDICATED:

14 In the management of acute or post-operative pain, including use in
15 outpatient surgeries . . .³⁸⁵

16 583. The March 30, 2000 letter also stated Janssen failed to adequately
17 present "contraindications, warnings, precautions, and side effects with a
18 prominence and readability reasonably comparable to the presentation of
19 information relating to the effectiveness of the product":

20 Although this piece contains numerous claims for the efficacy and
21 safety of Duragesic, you have not presented any risk information
22 concerning the boxed warnings, contraindications, warnings,
23 precautions, or side effects associated with Duragesic's use . . .
24 Therefore, this promotional piece is lacking in fair balance, or
25 otherwise misleading, because it fails to address important risks and
restrictions associated with Duragesic therapy.³⁸⁶

26 584. On September 2, 2004, the U.S. Department of Health and Human
27 Services ("HHS") sent Janssen a warning letter concerning Duragesic due to
28 "false or misleading claims about the abuse potential and other risks of the drug,
and . . . unsubstantiated effectiveness claims for Duragesic," including,

28³⁸⁵ *Id.* at 2-3.

³⁸⁶ *Id.* at 3 (emphasis in original).

1 specifically, “suggesting that Duragesic has a lower potential for abuse compared
 2 to other opioid products.”

3 585. The September 2, 2004 letter warned Janssen regarding its claims
 4 that Duragesic had a low reported rate of mentions in the Drug Abuse Warning
 5 Network (“DAWN”) as compared to other opioids. The letter stated that the claim
 6 was false or misleading because the claim was not based on substantial data and
 7 because the lower rate of mentions was likely attributable to Duragesic’s lower
 8 frequency of use compared to other opioids listed in DAWN:

9 The file card presents the prominent claim, “Low reported rate
 10 of mentions in DAWN data,” along with Drug Abuse Warning
 11 Network (DAWN) data comparing the number of mentions for
 12 Fentanyl/combinations (710 mentions) to other listed opioid products,
 13 including Hydrocodone/combinations (21,567 mentions),
 14 Oxycodone/combinations (18,409 mentions), and Methadone (10,725
 15 mentions). The file card thus suggests that Duragesic is less abused
 16 than other opioid drugs.

17 This is false or misleading for two reasons. First, we are not
 18 aware of substantial evidence or substantial clinical experience to
 19 support this comparative claim. The DAWN data cannot provide the
 20 basis for a valid comparison among these products. As you know,
 21 DAWN is not a clinical trial database. Instead, it is a national public
 22 health surveillance system that monitors drug-related emergency
 23 department visits and deaths. If you have other data demonstrating
 24 that Duragesic is less abused, please submit them.

25 Second, Duragesic is not as widely prescribed as other opioid
 26 products. As a result, the relatively lower number of mentions could
 27 be attributed to the lower frequency of use, and not to a lower
 28 incidence of abuse. The file card fails to disclose this information.³⁸⁷

29 586. The September 2, 2004 letter also detailed a series of unsubstantiated
 30 false or misleading claims regarding Duragesic’s effectiveness. The letter
 31 concluded that various claims made by Janssen were insufficiently supported,
 32 including:
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 37 ³⁸⁷ Warning Letter from Thomas W. Abrams, U.S. Department of Health and
 38 Human Services, to Ajit Shetty, Janssen Pharmaceutica, Inc. (Sept. 2, 2004),
 39 https://www.pharmamedtechbi.com/~media/Images/Publications/Archive/The%20
 40 Pink%20Sheet/66/038/00660380018/040920_duragesic_letter.pdf at 2.

- 1 • ““Demonstrated effectiveness in chronic back pain with additional patient
- 2 benefits, . . . 86% of patients experienced overall benefit in a clinical study
- 3 based on: pain control, disability in ADLs, quality of sleep.””
- 4 • ““All patients who experienced overall benefit from DURAGESIC would
- 5 recommend it to others with chronic low back pain.””
- 6 • ““Significantly reduced nighttime awakenings.””
- 7 • ““Significant improvement in disability scores as measured by the Oswestry
- 8 Disability Questionnaire and Pain Disability Index.””
- 9 • ““Significant improvement in physical functioning summary score.””
- 10 • ““Significant improvement in social functioning.””³⁸⁸

11 587. In addition, the September 2, 2004 letter identified “outcome claims
 12 [that] are misleading because they imply that patients will experience improved
 13 social or physical functioning or improved work productivity when using
 14 Duragesic.” The claims include ““1,360 loaves . . . and counting,’ ‘[w]ork,
 15 uninterrupted,’ ‘[l]ife, uninterrupted,’ ‘[g]ame, uninterrupted,’ ‘[c]hronic pain
 16 relief that supports functionality,’ ‘[h]elps patients think less about their pain,’ and
 17 ‘[i]mprove[s] . . . physical and social functioning.”” The September 2, 2004 letter
 18 stated: “Janssen has not provided references to support these outcome claims. We
 19 are not aware of substantial evidence or substantial clinical experience to support
 20 these claims.”³⁸⁹

21 588. On July 15, 2005, the FDA issued a public health advisory warning
 22 doctors of deaths resulting from the use of Duragesic and its generic competitor,
 23 manufactured by Mylan N.V. Plaintiffs are informed and believe that the advisory
 24 noted that the FDA had been ““examining the circumstances of product use to
 25 determine if the reported adverse events may be related to inappropriate use of the

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 27 ³⁸⁸ *Id.* at 2-3.
 28 ³⁸⁹ *Id.* at 3.

1 patch”” and noted the possibility “that patients and physicians might be unaware
 2 of the risks” of using the fentanyl transdermal patch, which is a potent opioid
 3 analgesic meant to treat chronic pain that does not respond to other painkillers.³⁹⁰

4 589. Finally, Cephalon has been the subject of investigations and
 5 enforcement actions for is misrepresentations concerning Actiq. For example:

6 590. In October 2000, Cephalon acquired the worldwide product rights to
 7 Actiq and began marketing and selling Actiq in the United States. The FDA
 8 explicitly stated that Actiq “***must not*** be used in opioid non-tolerant patients,” was
 9 contraindicated for the management of acute or postoperative pain, could be
 10 deadly to children, and was “intended to be used only in the care of opioid-
 11 tolerant cancer patients and only by oncologists and pain specialists who are
 12 knowledgeable of and skilled in the use of Schedule II opioids to treat cancer
 13 pain.”³⁹¹ The FDA also required that Actiq be provided only in compliance with a
 14 strict risk management program that explicitly limited the drug’s direct marketing
 15 to the approved target audiences, defined as oncologists, pain specialists, their
 16 nurses and office staff.³⁹²

17 591. Cephalon purchased the rights to Fentora, an even faster-acting tablet
 18 formulation of fentanyl, from Cima Labs, and submitted a new drug application to
 19 the FDA in August 2005. In September 2006, Cephalon received FDA approval to
 20 sell this faster-acting version of Actiq; but once again, concerned about the power
 21 and risks inherent to fentanyl, the FDA limited Fentora’s approval to the treatment
 22 of BTP in cancer patients who were already tolerant to around-the-clock opioid
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25 ³⁹⁰ *New Fentanyl Warnings: More Needed to Protect Patients*, Institute for Safe
 26 Medication Practices, August 11, 2005,
<https://www.ismp.org/newsletters/acutecare/articles/20050811.asp>

27 ³⁹¹ *Id.*

28 ³⁹² See John Carreyrou, *Narcotic “Lollipop” Becomes Big Seller Despite FDA Curbs*, Wall St. J. (Nov. 3, 2006), <https://www.opiates.com/media/narcotic-lollipop-becomes-big-seller-despite-fdacurbs/>.

1 therapy for their underlying persistent cancer pain. Cephalon began marketing and
2 selling Fentora in October 2006.

3 592. Due to the FDA's restrictions, Actiq's consumer base was limited, as
4 was its potential for growing revenue. In order to increase its revenue and market
5 share, Cephalon needed to find a broader audience and thus began marketing its
6 lollipop to treat headaches, back pain, sports injuries and other chronic non-cancer
7 pain, targeting non-oncology practices, including, but not limited to, pain doctors,
8 general practitioners, migraine clinics, anesthesiologists and sports clinics. It did
9 so in violation of applicable regulations prohibiting the marketing of medications
10 for off-label use and indirect contravention of the FDA's strict instructions that
11 Actiq be prescribed only to terminal cancer patients and by oncologists and pain
12 management doctors experienced in treating cancer pain.

13 593. Beginning in or about 2003, former Cephalon employees filed four
14 whistleblower lawsuits claiming the company had wrongfully marketed Actiq for
15 unapproved off-label uses. On September 29, 2008, Cephalon finalized and
16 entered into a corporate integrity agreement with the Office of the Inspector
17 General of HHS and agreed to pay \$425 million in civil and criminal penalties for
18 its off-label marketing of Actiq and two other drugs (Gabitril and Provigil).

19 According to a DOJ press release, Cephalon trained sales representatives to
20 disregard restrictions of the FDA-approved label, employed sales representatives
21 and healthcare professionals to speak to physicians about off-label uses of the
22 three drugs and funded CME to promote off-label uses. Specifically, the DOJ
23 stated:

24 From 2001 through at least 2006, Cephalon was allegedly promoting
25 [Actiq] for non-cancer patients to use for such maladies as migraines,
26 sickle-cell pain crises, injuries, and in anticipation of changing wound
dressings or radiation therapy. Cephalon also promoted Actiq for use

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1 in patients who were not yet opioid-tolerant, and for whom it could
2 have life-threatening results.³⁹³

3 594. Then-acting U.S. Attorney Laurie Magid commented on the dangers
4 of Cephalon's unlawful practices:

5 “This company subverted the very process put in place to protect the public
6 from harm, and put patients' health at risk for nothing more than boosting
7 its bottom line. People have an absolute right to their doctors' best medical
8 judgment. They need to know the recommendations a doctor makes are not
9 influenced by sales tactics designed to convince the doctor that the drug
10 being prescribed is safe for uses beyond what the FDA has approved.”³⁹⁴

11 595. Upon information and belief, documents uncovered in the
12 government's investigations confirm that Cephalon directly targeted non-
13 oncology practices and pushed its sales representatives to market Actiq for off-
14 label use. For instance, the government's investigations confirmed:

- 15 a. Cephalon instructed its sales representatives to ask non-cancer doctors
16 whether they have the potential to treat cancer pain. Even if the doctor
17 answered “no,” a decision tree provided by Cephalon instructed the sales
18 representatives to give these physicians free Actiq coupons;
- 19 b. Cephalon targeted neurologists in order to encourage them to prescribe
20 Aictiq to patients with migraine headaches;
- 21 c. Cephalon sales representatives utilized the assistance of outside pain
22 management specialists when visiting non-cancer physicians to pitch
23 Aictiq. The pain management specialist would falsely inform the
24 physician that Aictiq does not cause patients to experience a “high” and
25 carries a low risk of diversion toward recreational use;

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³⁹³ Press Release, U.S. Department of Justice, Pharmaceutical Company Cephalon
28 To Pay \$425 Million For Off-Label Drug Marketing (Sept. 29, 2008),
<https://www.justice.gov/archive/usao/pae/News/2008/sep/cephalonrelease.pdf>.

394 *Id.*

- 1 d. Cephalon set sales quotas for its sales and marketing representatives that
- 2 could not possibly have been met solely by promoting Actiq for its
- 3 FDA-approved indication;
- 4 e. Cephalon promoted the use of higher doses of Actiq than patients
- 5 required by encouraging prescriptions of the drug to include larger-than-
- 6 necessary numbers of lozenges with unnecessarily high doses of
- 7 fentanyl; and
- 8 f. Cephalon promoted Actiq for off-label use by funding and controlling
- 9 CME seminars that promoted and misrepresented the efficacy of the
- 10 drug for off-label uses such as treating migraine headaches and for
- 11 patients not already opioid-tolerant.³⁹⁵

12 596. The FDA's letters and safety alerts, the DOJ and state investigations,
13 and the massive settlement seemed to have had little impact on Cephalon as it
14 continued its deceptive marketing strategy for both Actiq and Fentora.

15 597. On September 27, 2007, the FDA issued a public health advisory to
16 address numerous reports that patients who did not have cancer or were not
17 opioid-tolerant had been prescribed Fentora, and death or life-threatening side
18 effects had resulted. The FDA warned: "Fentora should not be used to treat any
19 type of short-term pain."³⁹⁶

20 598. Nevertheless, in 2008, Cephalon pushed forward to expand the target
21 base for Fentora and filed a supplemental drug application requesting FDA
22 approval of Fentora for the treatment of non-cancer BTP. In the application and
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24 ³⁹⁵ John Carreyrou, Cephalon Used Improper Tactics to Sell Drug, Probe Finds,
25 Wall St. J., Nov. 21, 2006, at B1 (hereinafter "Carreyrou, Cephalon Used Improper
26 Tactics").

27 ³⁹⁶ Press Release, U.S. Food & Drug Administration, Public Health Advisory:
28 Important Information for the Safe Use of Fentora (fentanyl buccal tablets) (Sept.
 26, 2007),
 <https://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm051273.htm>.

1 supporting presentations to the FDA, Cephalon admitted both that it knew the
 2 drug was heavily prescribed for off-label use and that the drug's safety for such
 3 use had never been clinically evaluated.³⁹⁷ An FDA advisory committee noted that
 4 Fentora's existing risk management program was ineffective and stated that
 5 Cephalon would have to institute a risk evaluation and mitigation strategy for the
 6 drug before the FDA would consider broader label indications. In response,
 7 Cephalon revised Fentora's label and medication guide to add strengthened
 8 warnings.

9 599. But in 2009, the FDA once again informed Cephalon that the risk
 10 management program was not sufficient to ensure the safe use of Fentora for
 11 already approved indications.

12 600. On March 26, 2009, the FDA warned Cephalon against its
 13 misleading advertising of Fentora ("Warning Letter"). The Warning Letter
 14 described a Fentora Internet advertisement as misleading because it purported to
 15 broaden "the indication for Fentora by implying that any patient with cancer who
 16 requires treatment for breakthrough pain is a candidate for Fentora . . . when this
 17 is not the case."³⁹⁸ Rather, Fentora was only indicated for those who were already
 18 opioid tolerant. It further criticized Cephalon's other direct Fentora advertisements
 19 because they did not disclose the risks associated with the drug.

20 601. Flagrantly disregarding the FDA's refusal to approve Fentora for
 21 non-cancer BTP and its warning against marketing the drug for the same,
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24 ³⁹⁷ FENTORA (fentanyl buccal tablet) CII, Joint Meeting of Anesthetic and Life
 25 Support Drugs and
 26 Drug Safety and Risk Management Advisory Committee, U.S. Food & Drug
 27 Administration (May 6, 2008), <https://www.fda.gov/ohrms/dockets/ac/08/slides/2008-4356s2-03-Cephalon.pdf>.

28 ³⁹⁸ Letter from Michael Sauers, Regulatory Review Officer, Division of Drug
 Marketing, Advertising and Communications, to Carole S. Marchione, Senior
 Director and Group Leader, Regulatory Affairs (March 26, 2009)

1 Cephalon continued to use the same sales tactics to push Fentora as it did with
2 Actiq.

3 602. The misrepresentations disseminated by members of the Opioid
4 Marketing Enterprise, and the RICO Marketing Defendants, caused The County
5 and California consumers to pay for excessive opioid prescriptions, suffer injuries
6 and losses, and to incur costs associated with the opioid epidemic caused by the
7 Opioid Marketing Enterprise.

8 603. The RICO Marketing Defendants alone could not have accomplished
9 the purpose of the Opioid Marketing Enterprise without the assistance of the Front
10 Groups and KOLs, who were perceived as “neutral” and more “scientific” than
11 the RICO Defendants themselves. Without these misrepresentations, the Opioid
12 Marketing Enterprise could not have achieved its common purpose.

13 604. The impact of the Opioid Marketing Enterprise’s scheme is still in
14 place – i.e., the opioids continue to be prescribed and used for chronic pain
15 throughout the State of California, and the epidemic continues to injure The
16 County, and consume the resources of The County’s and California’s health care
17 and law enforcement systems.

18 605. The foregoing evidences that the RICO Marketing Defendants, the
19 Front Groups, and the KOLs were each willing participants in the Opioid
20 Marketing Enterprise, had a common purpose and interest in the object of the
21 scheme, and functioned within a structure designed to effectuate the Enterprise’s
22 purpose.

23 **B. CONDUCT OF THE OPIOID MARKETING ENTERPRISE.**

24 606. During time period described in this Complaint, from approximately
25 the late 1990s to the present, the RICO Marketing Defendants exerted control over
26 the Opioid Marketing Enterprise and participated in the operation or management
27 of the affairs of the Opioid Marketing Enterprise, directly or indirectly, in the
28 following ways:

- a. Creating a body of deceptive, misleading and unsupported medical and popular literature about opioids that (a) understated the risks and overstated the benefits of long-term use; (b) appeared to be the result of independent, objective research; and (c) was thus more likely to be relied upon by physicians, patients, and payors;
 - b. Creating a body of deceptive, misleading and unsupported electronic and print advertisements about opioids that (a) understated the risks and overstated the benefits of long-term use; (b) appeared to be the result of independent, objective research; and (c) was thus more likely to be relied upon by physicians, patients, and payors;
 - c. Creating a body of deceptive, misleading and unsupported sales and promotional training materials about opioids that (a) understated the risks and overstated the benefits of long-term use; (b) appeared to be the result of independent, objective research; and (c) was thus more likely to be relied upon by physicians, patients, and payors;
 - d. Creating a body of deceptive, misleading and unsupported CMEs and speaker presentations about opioids that (a) understated the risks and overstated the benefits of long-term use; (b) appeared to be the result of independent, objective research; and (c) was thus more likely to be relied upon by physicians, patients, and payors;
 - e. Selecting, cultivating, promoting and paying KOLs based solely on their willingness to communicate and distribute the RICO Defendants' messages about the use of opioids for chronic pain;
 - f. Providing substantial opportunities for KOLs to participate in research studies on topics the RICO Defendants suggested or chose, with the predictable effect of ensuring that many favorable studies appeared in the academic literature;

- 1 g. Paying KOLs to serve as consultants or on the RICO Defendants' advisory boards, on the advisory boards and in leadership positions on Front Groups, and to give talks or present CMEs, typically over meals or at conferences;
- 2 h. Selecting, cultivating, promoting, creating and paying Front Groups based solely on their willingness to communicate and distribute the RICO Defendants' messages about the use of opioids for chronic pain;
- 3 i. Providing substantial opportunities for Front Groups to participate in and/or publish research studies on topics the RICO Defendants suggested or chose (and paid for), with the predictable effect of ensuring that many favorable studies appeared in the academic literature;
- 4 j. Paying significant amounts of money to the leaders and individuals associated with Front Groups;
- 5 k. Donating to Front Groups to support talks or CMEs, that were typically presented over meals or at conferences;
- 6 l. Disseminating many of their false, misleading, imbalanced, and unsupported statements through unbranded materials that appeared to be independent publications from Front Groups;
- 7 m. Sponsoring CME programs put on by Front Groups that focused exclusively on the use of opioids for chronic pain;
- 8 n. Developing and disseminating pro-opioid treatment guidelines with the help of the KOLs as authors and promoters, and the help of the Front Groups as publishers, and supporters;
- 9 o. Encouraging Front Groups to disseminate their pro-opioid messages to groups targeted by the RICO Defendants, such as veterans and the elderly, and then funded that distribution;

- 1 p. Concealing their relationship to and control of Front Groups and KOLs
- 2 from the The County and the public at large; and
- 3 q. Intending that Front Groups and KOLs would distribute through the U.S.
- 4 mail and interstate wire facilities, promotional and other materials that
- 5 claimed opioids could be safely used for chronic pain.

6 607. The Front Groups also participated in the conduct of the Opioid
7 Marketing Enterprise, directly or indirectly, in the following ways:

- 8 a. The Front Groups promised to, and did, make representations regarding
9 opioids and the RICO Marketing Defendants' drugs that were consistent
10 with the RICO Marketing Defendants' messages;
- 11 b. The Front Groups distributed, through the U.S. Mail and interstate wire
12 facilities, promotional and other materials which claimed that opioids
13 could be safely used for chronic pain without addiction, and
14 misrepresented the benefits of using opioids for chronic pain outweighed
15 the risks;
- 16 c. The Front Groups echoed and amplified messages favorable to increased
17 opioid use—and ultimately, the financial interests of the RICO
18 Marketing Defendants;
- 19 d. The Front Groups issued guidelines and policies minimizing the risk of
20 opioid addiction and promoting opioids for chronic pain;
- 21 e. The Front Groups strongly criticized the 2016 guidelines from the
22 Center for Disease Control and Prevention (CDC) that recommended
23 limits on opioid prescriptions for chronic pain; and
- 24 f. The Front Groups concealed their connections to the KOLs and the
25 RICO Marketing Defendants.

26 608. The RICO Marketing Defendants' Front Groups, "with their large
27 numbers and credibility with policymakers and the public—have 'extensive
28 influence in specific disease areas.'" The RICO Marketing Defendants' larger

1 Front Groups “likely have a substantial effect on policies relevant to their industry
 2 sponsors.”³⁹⁹ “By aligning medical culture with industry goals in this way, many
 3 of the groups described in this report may have played a significant role in
 4 creating the necessary conditions for the U.S. opioid epidemic.”⁴⁰⁰

5 609. The KOLs also participated, on information and belief, in the conduct
 6 of the affairs of the Opioid Marketing Enterprise, directly or indirectly, in the
 7 following ways:

- 8 a. The KOLs promised to, and did, make representations regarding opioids
 9 and the RICO Marketing Defendants’ drugs that were consistent with
 10 the RICO Marketing Defendants’ messages themselves;
- 11 b. The KOLs distributed, through the U.S. Mail and interstate wire
 12 facilities, promotional and other materials which claimed that opioids
 13 could be safely used for chronic pain without addiction, and
 14 misrepresented the benefits of using opioids for chronic pain outweighed
 15 the risks;
- 16 c. The KOLs echoed and amplified messages favorable to increased opioid
 17 use—and ultimately, the financial interests of the RICO Marketing
 18 Defendants;
- 19 d. The KOLs issued guidelines and policies minimizing the risk of opioid
 20 addiction and promoting opioids for chronic pain;
- 21 e. The KOLs strongly criticized the 2016 guidelines from the Center for
 22 Disease Control and Prevention (CDC) that recommended limits on
 23 opioid prescriptions for chronic pain; and

26 ³⁹⁹ *Fueling an Epidemic: Exposing the Financial Ties Between Opioid*
 27 *Manufacturers and Third Party Advocacy Groups*, U.S. Senate Homeland Security
 & Governmental Affairs Committee, Ranking Members’ Office, February 12,
 28 2018 <https://www.hslc.org/?abstract&did=808171> (“*Fueling an Epidemic*”), at 1.

⁴⁰⁰ *Id.* 2.

1 f. The KOLs concealed their connections to the Front Groups and the
2 RICO Defendants, and their sponsorship by the RICO Marketing
3 Defendants.

4 610. The scheme devised and implemented by the RICO Marketing
5 Defendants and members of the Opioid Marketing Enterprise, amounted to a
6 common course of conduct intended to increase the RICO Marketing Defendants
7 sales from prescription opioids by encouraging the prescribing and use of opioids
8 for long-term chronic pain. The scheme was a continuing course of conduct, and
9 many aspects of it continue through to the present.

10 **C. PATTERN OF RACKETEERING ACTIVITY**

11 611. The RICO Marketing Defendants conducted and participated in the
12 conduct of the Opioid Marketing Enterprise through a pattern of racketeering
13 activity within the meaning of 18 U.S.C. § 1961(1) that employed the use of mail
14 and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire
15 fraud).

16 612. The RICO Marketing Defendants committed, conspired to commit,
17 and/or aided and abetted in the commission of at least two predicate acts of
18 racketeering activity (*i.e.* violations of 18 U.S.C. §§ 1341 and 1343) within the
19 past ten years. The multiple acts of racketeering activity that the RICO Marketing
20 Defendants committed, or aided and abetted in the commission of, were related to
21 each other, posed a threat of continued racketeering activity, and therefore
22 constitute a “pattern of racketeering activity.” The racketeering activity was made
23 possible by the RICO Marketing Defendants’ regular use of the facilities, services,
24 distribution channels, and employees of the Opioid Marketing Enterprise, the U.S.
25 Mail and interstate wire facilities. The RICO Marketing Defendants participated
26 in the scheme to defraud by using mail, telephones and the Internet to transmit
27 mailings and wires in interstate or foreign commerce.

28

1 613. The pattern of racketeering activity described herein used by the
2 RICO Marketing Defendants and the Opioid Marketing Enterprise likely involved
3 thousands of separate instances of the use of the U.S. Mail or interstate wire
4 facilities in furtherance of the unlawful Opioid Marketing Enterprise, including
5 virtually uniform misrepresentations, concealments and material omissions
6 regarding the beneficial uses and non-addictive qualities for the long-term
7 treatment of chronic, non-acute and non-cancer pain, with the goal of profiting
8 from increased sales of the RICO Marketing Defendants' drugs induced by
9 consumers, prescribers, regulators and the County's reliance on the RICO
10 Marketing Defendants' misrepresentations.

11 614. Each of these fraudulent mailings and interstate wire transmissions
12 constitutes racketeering activity and collectively, these violations constitute a
13 pattern of racketeering activity, through which Defendants, the Front Groups and
14 the KOLs defrauded and intended to defraud California consumers, the State, and
15 other intended victims.

16 615. In devising and executing the illegal scheme, the RICO Marketing
17 Defendants devised and knowingly carried out a material scheme and/or artifice to
18 defraud by means of materially false or fraudulent pretenses, representations,
19 promises, or omissions of material facts regarding the safe, non-addictive and
20 effective use of opioids for long-term chronic, non-acute and non-cancer pain.
21 The RICO Marketing Defendants and members of the Opioid Marketing
22 Enterprise knew that these representations violated the FDA approved use of these
23 drugs, and were not supported by actual evidence. For the purpose of executing
24 the illegal scheme, the RICO Marketing Defendants intended that their
25 common purpose and scheme to defraud would, and did, use the U.S. Mail and
26 interstate wire facilities, intentionally and knowingly with the specific intent to
27 advance their illegal scheme.

28

1 616. The RICO Marketing Defendants' predicate acts of racketeering (18
2 U.S.C. § 1961(1)) include, but are not limited to:

- 3 a. Mail Fraud: The RICO Marketing Defendants violated 18 U.S.C. § 1341
4 by sending or receiving, or by causing to be sent and/or received,
5 materials via U.S. mail or commercial interstate carriers for the purpose
6 of executing the unlawful scheme to design, manufacture, market, and
7 sell the prescription opioids by means of false pretenses,
8 misrepresentations, promises, and omissions.
- 9 b. Wire Fraud: The RICO Marketing Defendants violated 18 U.S.C. § 1343
10 by transmitting and/or receiving, or by causing to be transmitted and/or
11 received, materials by wire for the purpose of executing the unlawful
12 scheme to design, manufacture, market, and sell the prescription opioids
13 by means of false pretenses, misrepresentations, promises, and
14 omissions.

15 617. Each instance of racketeering activity alleged herein was related, had
16 similar purposes, involved the same or similar participants and methods of
17 commission, and had similar results affecting similar victims, including California
18 consumers, prescribers, regulators and The County. The RICO Marketing
19 Defendants, Front Groups and KOLs calculated and intentionally crafted the
20 scheme and common purpose of the Opioid Marketing Enterprise to ensure their
21 own profits remained high. In designing and implementing the scheme, the RICO
22 Marketing Defendants understood and intended that those in the distribution chain
23 rely on the integrity of the pharmaceutical companies and ostensibly neutral third
24 parties to provide objective and scientific evidence regarding the RICO Marketing
25 Defendants' products.

26 618. By intentionally misrepresenting the risks and benefits of using
27 opioids for chronic pain, and then subsequently failing to disclose such practices
28 to California consumers, prescribers, regulators and The County. Defendants, the

1 Front Groups and the KOLs engaged in a fraudulent and unlawful course of
2 conduct constituting a pattern of racketeering activity.

3 619. The racketeering activities conducted by the RICO Marketing
4 Defendants, Front Groups and KOLs amounted to a common course of conduct,
5 with a similar pattern and purpose, intended to deceive California consumers,
6 prescribers, regulators and The County. Each separate use of the U.S. Mail and/or
7 interstate wire facilities employed by Defendants was related, had similar intended
8 purposes, involved similar participants and methods of execution, and had the
9 same results affecting the same victims, including California consumers,
10 prescribers, regulators and The County. The RICO Marketing Defendants have
11 engaged in the pattern of racketeering activity for the purpose of conducting the
12 ongoing business affairs of the Opioid Marketing Enterprise.

13 620. The RICO Marketing Defendants' pattern of racketeering activity
14 alleged herein and the Opioid Marketing Enterprise are separate and distinct from
15 each other. Likewise, the RICO Marketing Defendants are distinct from the
16 Opioid Marketing Enterprise.

17 621. The pattern of racketeering activity alleged herein is continuing as of
18 the date of this complaint, and, upon information and belief, will continue into the
19 future unless enjoined by this Court.

20 622. Many of the precise dates of the Opioid Marketing Enterprise's uses
21 of the U.S. Mail and interstate wire facilities (and corresponding predicate acts of
22 mail and wire fraud) have been hidden and cannot be alleged without access to the
23 books and records maintained by the RICO Marketing Defendants, Front Groups,
24 and KOLs. Indeed, an essential part of the successful operation of the Opioid
25 Marketing Enterprise alleged herein depended upon secrecy. However, Plaintiffs
26 have described the occasions on which the RICO Marketing Defendants, Front
27 Groups, and KOLs disseminated misrepresentations and false statements to
28

1 California consumers, prescribers, regulators and The County, and how those acts
2 were in furtherance of the scheme, and do so further below.

3 623. The RICO Marketing Defendants' use of the U.S. Mail and interstate
4 wire facilities to perpetrate the opioids marketing scheme involved thousands of
5 communications, publications, representations, statements, electronic
6 transmissions, payments, including, *inter alia*:

- 7 a. Marketing materials about opioids, and their risks and benefits, which
8 the RICO Marketing Defendants sent to health care providers,
9 transmitted through the internet and television, published, and
10 transmitted to Front Groups and KOLs located across the country and
11 the State;
- 12 b. Written representations and telephone calls between the RICO
13 Marketing Defendants and Front Groups regarding the
14 misrepresentations, marketing statements and claims about opioids,
15 including the non-addictive, safe use of chronic long-term pain
16 generally;
- 17 c. Written representations and telephone calls between the RICO
18 Marketing Defendants and KOLs regarding the misrepresentations,
19 marketing statements and claims about opioids, including the non-
20 addictive, safe use of chronic long-term pain generally;
- 21 d. E-mails, telephone and written communications between the RICO
22 Marketing Defendants and the Front Groups agreeing to or
23 implementing the opioids marketing scheme;
- 24 e. E-mails, telephone and written communications between the RICO
25 Marketing Defendants and the KOLs agreeing to or implementing the
26 opioids marketing scheme;
- 27 f. Communications between the RICO Marketing Defendants, Front
28 Groups and the media regarding publication, drafting of treatment

1 guidelines, and the dissemination of the same as part of the Opioid
2 Marketing Enterprise;

3 g. Communications between the RICO Marketing Defendants, KOLs and
4 the media regarding publication, drafting of treatment guidelines, and
5 the dissemination of the same as part of the Opioid Marketing
6 Enterprise;

7 h. Written and oral communications directed to State agencies, federal and
8 state courts, and private insurers throughout the State that fraudulently
9 misrepresented the risks and benefits of using opioids for chronic pain;
10 and

11 i. Receipts of increased profits sent through the U.S. Mail and interstate
12 wire facilities – the wrongful proceeds of the scheme.

13 624. In addition to the above-referenced predicate acts, it was foreseeable
14 to the RICO Marketing Defendants that the Front Groups and the KOLs would
15 distribute publications through the U.S. Mail and by interstate wire facilities, and,
16 in those publications, claim that the benefits of using opioids for chronic pain
17 outweighed the risks of doing so.

18 625. The RICO Marketing Defendants aided and abetted others in the
19 violations of the above laws, thereby rendering them indictable as principals in the
20 18 U.S.C. §§ 1341 and 1343 offenses.

21 626. To achieve the common goal and purpose of the Opioid Marketing
22 Enterprise, the RICO Marketing Defendants and members of the Opioid
23 Marketing Enterprise hid from the consumers, prescribers, regulators and The
24 County: (1) the fraudulent nature of the RICO Marketing Defendants' marketing
25 scheme; (2) the fraudulent nature of statements made by the RICO Marketing
26 Defendants and by their KOLs, Front Groups and other third parties regarding the
27 safety and efficacy of prescription opioids; and (3) the true nature of the
28 relationship between the members of the Opioid Marketing Enterprise.

1 627. The RICO Marketing Defendants, and each member of the Opioid
2 Marketing Enterprise agreed, with knowledge and intent, to the overall objective
3 of the RICO Marketing Defendants' fraudulent scheme and participated in the
4 common course of conduct to commit acts of fraud and indecency in marketing
5 prescription opioids.

6 628. Indeed, for the RICO Marketing Defendants' fraudulent scheme to
7 work, each of the RICO Marketing Defendants had to agree to implement similar
8 tactics regarding fraudulent marketing of prescription opioids. This conclusion is
9 supported by the fact that the RICO Marketing Defendants each financed,
10 supported, and worked through the same KOLs and Front Groups, and often
11 collaborated on and mutually supported the same publications, CMEs,
12 presentations, and prescription guidelines.

13 629. As described herein, the RICO Marketing Defendants engaged in a
14 pattern of related and continuous predicate acts for years. The predicate acts
15 constituted a variety of unlawful activities, each conducted with the common
16 purpose of obtaining significant money and revenue from the marketing and sale
17 of their highly addictive and dangerous drugs. The predicate acts also had the
18 same or similar results, participants, victims, and methods of commission. The
19 predicate acts were related and not isolated events.

20 630. The RICO Marketing Defendants predicate acts all had the purpose
21 of creating the opioid epidemic that substantially injured The County's business
22 and property, while simultaneously generating billion-dollar revenue and profits
23 for the RICO Marketing Defendants. The predicate acts were committed or caused
24 to be committed by the RICO Marketing Defendants through their participation in
25 the Opioid Marketing Enterprise and in furtherance of its fraudulent scheme.

26 631. The RICO Marketing Defendants' predicate acts and pattern of
27 racketeering activity were a substantial and foreseeable cause of The County's
28 injury and the relationship between the RICO Marketing Defendants' conduct and

1 The County's injury is logical and not speculative. It was foreseeable to the RICO
2 Marketing Defendants that when they fraudulently marketed highly-addictive and
3 dangerous drugs, that were approved for very limited and specific uses by the
4 FDA, as non-addictive and safe for off-label uses such as moderate pain, non-
5 cancer pain, and long-term chronic pain, that the RICO Marketing Defendants
6 would create an opioid-addiction epidemic that logically, substantially and
7 foreseeably harmed The County.

8 632. The pattern of racketeering activity alleged herein is continuing as of
9 the date of this Complaint and, upon information and belief, will continue into the
10 future unless enjoined by this Court. The last racketeering incident occurred
11 within five years of the commission of a prior incident of racketeering.

12 **D. DAMAGES.**

13 **1. Impact of the Opioid Marketing Enterprise.**

14 633. California has been especially ravaged by the national opioid crisis.

15 634. More people die each year from drug overdoses in California than in
16 any other state.⁴⁰¹ The State's death rate has continued to climb, increasing by 30
17 percent from 1999 to 2015, according to the Center for Disease Control (CDC).⁴⁰²

18 635. In 2016, 1,925 Californians died due to prescription opioids.⁴⁰³ This
19 number is on par with other recent years: in 2015, 1,966 deaths in California were
20 due just to prescription opioids (not including heroin); in 2014 that number was
21 even higher at 2,024 prescription opioid deaths; and in 2013, 1,934 Californians
22 died from a prescription opioid overdose.⁴⁰⁴

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⁴⁰¹ Davis, *supra*.

26 ⁴⁰² Karlamangla, *supra*.

27 ⁴⁰³ Davis, *supra*.

28 ⁴⁰⁴California Department of Public Health, *California Opioid Overdose Surveillance Dashboard*, *supra*.

1 636. Of the 1,925 opioid-related deaths in California in 2016, fentanyl was
 2 a factor in at least 234 of them.⁴⁰⁵ This is an increase of 47 percent for 2016.⁴⁰⁶
 3 Heroin-related deaths have risen by 67 percent in California since 2006.⁴⁰⁷

4 637. The high number of deaths is due in part to the extraordinary number
 5 of opioids prescribed in the State. Over 23.6 million prescriptions for opioids were
 6 written in California in just 2016.⁴⁰⁸

7 638. The California Department of Public Health tracks the number of
 8 reported hospitalizations and emergency department visits due to prescription
 9 opioids.⁴⁰⁹ In 2015, the last year for which information is currently available,
 10 California had 3,935 emergency department visits and 4,095 hospitalizations
 11 related to prescription opioid overdoses (excluding heroin).⁴¹⁰ The numbers were
 12 even higher in 2014, when 4,106 people visited the emergency department and
 13 4,482 people were hospitalized due to prescription opioid abuse.⁴¹¹ In 2013, there
 14 were 3,964 emergency department visits and 4,344 hospitalizations for
 15 prescription opioid overdoses.⁴¹² When emergency visits and hospitalizations
 16 include heroin, the numbers are even higher.⁴¹³

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 20 ⁴⁰⁵ Davis, *supra*.

21 ⁴⁰⁶ Karlamangla, *supra*.

22 ⁴⁰⁷ California Department of Public Health, *State of California Strategies to*
 23 *Address Prescription Drug (Opioid) Misuse, Abuse, and Overdose Epidemic in*
 24 *California* at 3 (June 2016), available at
<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/CDPH%20Document%20Library/Prescription%20Drug%20Overdose%20Program/CAOpioidPreventionStrategies4.17.pdf> (last visited March 2, 2018).

25 ⁴⁰⁸ California Department of Public Health, *California Opioid Overdose*
Surveillance Dashboard, *supra*.

26 ⁴⁰⁹ *Id.*

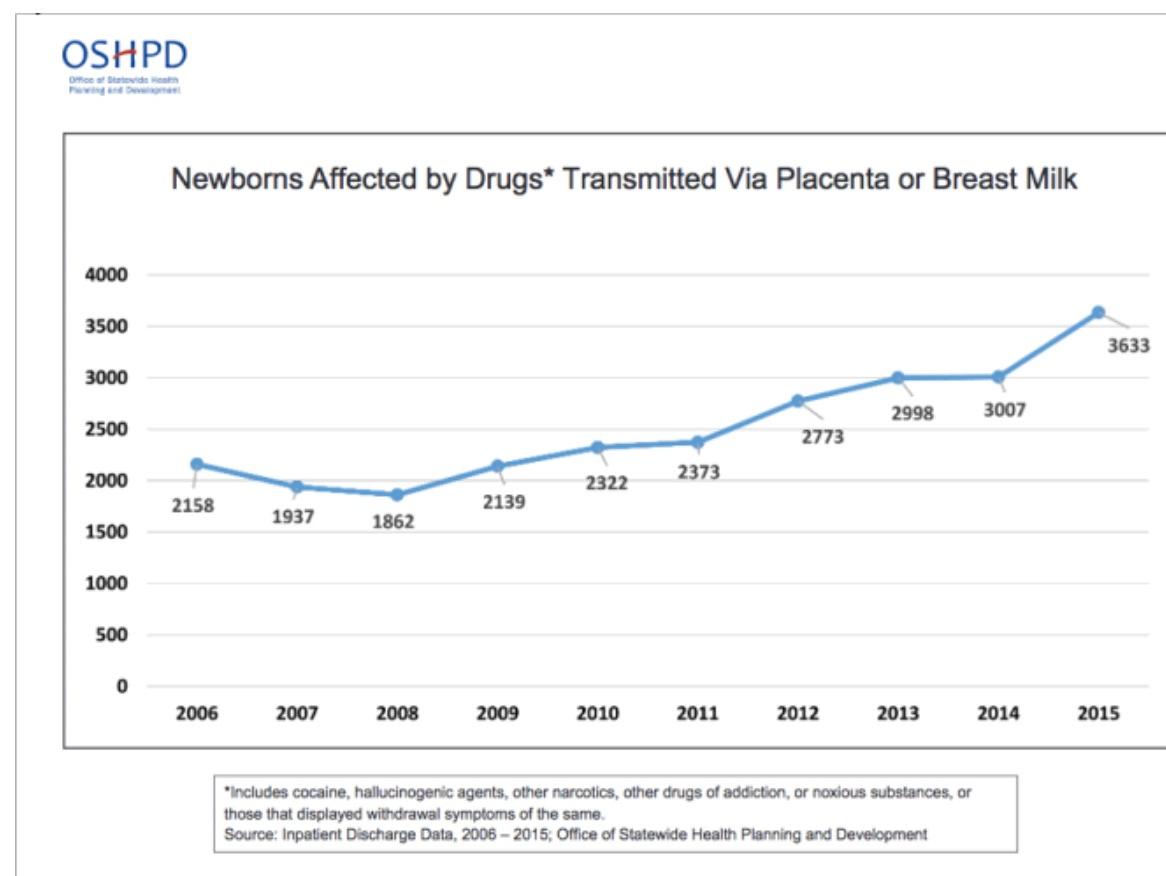
27 ⁴¹⁰ *Id.*

28 ⁴¹¹ *Id.*

29 ⁴¹² *Id.*

30 ⁴¹³ *Id.*

1 639. Neonatal Abstinence Syndrome (NAS) has increased dramatically in
 2 California, with the rate of infants born with NAS more than tripling from 2008 to
 3 2013.⁴¹⁴ While the number of affected newborns rose from 1,862 in 2008 to 3,007
 4 in 2014, that number jumped by another 21 percent in 2015.⁴¹⁵ This is despite a
 5 steady decline in the overall number of births in California during that same
 6 time.⁴¹⁶



640. Reports from California's Office of Statewide Health Planning, which collects data from licensed health care facilities, have shown a 95 percent

⁴¹⁴ California Child Welfare Co-Investment Partnership, *supra* at 5.

⁴¹⁵ Clark, *supra*.

⁴¹⁶ *Id.*

1 increase between 2008 and 2015 of newborns affected by drugs transmitted via
2 placenta or breast milk.⁴¹⁷

3 641. The opioid epidemic has also had an impact on crime in California.
4 Pharmacy robberies have gone up by 163 percent in California over the last two
5 years, according to the DEA. The DEA recorded 90 incidents in 2015, 154 in
6 2016 and, through mid-November of 2017, that number had climbed to 237.⁴¹⁸
7 Most perpetrators were after prescription opioids.⁴¹⁹ In addition, fentanyl seizures
8 at California ports increased 266 percent in fiscal year 2017.⁴²⁰

9 642. The opioid epidemic is particularly devastating in Plaintiffs'
10 Community.

11 643. In 2016, the County had an opioid overdose death rate of 9.8 per
12 100,000 people.⁴²¹

13 644. From 2012 to 2014, the County suffered 69 deaths due to drug
14 overdoses for a drug overdose mortality rate of 23 deaths per 100,000 residents.⁴²²

15 645. Prescription opioids have also been responsible for a high rate of
16 emergency department visits and hospitalizations in the County. In 2016, Nevada
17 County had a rate of 17 emergency department visits due to opioid overdoses

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⁴¹⁷ California Child Welfare Co-Investment Partnership, *supra*.

21 ⁴¹⁸ Ed Fletcher, "What's behind the spike in drug store robberies?" *The Sacramento Bee*, Dec. 8, 2017 (available at <http://www.sacbee.com/news/local/crime/article188636384.html> (last visited March 2, 2018)).

22 ⁴¹⁹ *Id.*

23 ⁴²⁰ United State Department of Justice, The United States Attorney's Office,
24 Southern District of California, *U.S. Attorney Appoints Opioid Coordinators* (Feb.
25 8, 2018) available at <https://www.justice.gov/usao-sdca/pr/us-attorney-appoints-opioid-coordinators> (last visited March 2, 2018).

26 ⁴²¹ California Department of Public Health, *California Opioid Overdose Surveillance Dashboard*, available at https://pdop.shinyapps.io/ODdash_v1/ (last visited April 20, 2018) (Nevada County specific page).

27 ⁴²² County Health Rankings & Roadmaps, Drug overdose deaths, available at <http://www.countyhealthrankings.org/app/california/2016/measure/factors/138/data> (last visited April 20, 2018).

1 (excluding heroin) per 100,000 people, and 19 opioid overdose hospitalizations
 2 per 100,000 residents, which was the fourth highest rate in the State that year.⁴²³

3 646. The CDC has tracked prescription rates per county in the United
 4 States, identifying the geographic “hotspots” for rates of opioid prescriptions.⁴²⁴
 5 The CDC has calculated the geographic distribution at county levels of opioid
 6 prescriptions dispensed per 100 persons,⁴²⁵ revealing that Nevada County has
 7 been a consistent hotspot over at least the past decade.

8 647. The CDC’s statistics prove that the opioid prescription rates in
 9 Nevada County have exceeded any legitimate medical, scientific, or industrial
 10 purpose. The overall opioid prescribing rate in 2016 was 66.5 prescriptions per
 11 100 people and 44.8 in California.⁴²⁶ However, in Nevada County, California, the
 12 2016 prescription rate was 83 per 100 people.⁴²⁷ This is down from the 2015
 13 prescribing rate for Nevada County which was 86 per 100 people.⁴²⁸

14 648. Unfortunately, the 2015 and 2016 high rates of opioid prescriptions
 15 were not an aberration for Nevada County. Consistently, the opioid prescribing
 16 rates in Nevada County have been significantly greater than the national and state
 17 averages, and often are more than one prescription per person living in the
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19 ⁴²³ California Department of Public Health, *California Opioid Overdose*
 20 *Surveillance Dashboard*, available at https://pdop.shinyapps.io/ODdash_v1/ (last
 visited April 20, 2018) (Nevada County specific page).

21 ⁴²⁴ U.S. Prescribing Rate Maps, CDC, available at
 22 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 2017).

23 ⁴²⁵ *Id.*

24 ⁴²⁶ *Id. See also* U.S. State Prescribing Rates, 2016, available at
 25 <https://www.cdc.gov/drugoverdose/maps/rxstate2016.html> (last visited April 18,
 2018).

26 ⁴²⁷ U.S. County Prescribing Rates, 2016, (reporting for “Nevada, CA” here and
 27 below) CDC available at
 28 <https://www.cdc.gov/drugoverdose/maps/rxcounty2016.html> (last visited April 18,
 2018).

29 ⁴²⁸ U.S. County Prescribing Rates, 2015, CDC, available at
 30 <https://www.cdc.gov/drugoverdose/maps/rxcounty2015.html> (last visited April 18,
 31 2018).

1 County. Compared to a national average of 75.6 opioid prescriptions per 100
2 people in 2014⁴²⁹ and 52.7 in California,⁴³⁰ the Nevada County opioid prescription
3 rate was 97.4 per 100 people.⁴³¹ In 2013, the national average was 78.1 opioid
4 prescriptions per 100 people,⁴³² but the opioid prescription rate in Nevada County
5 was 105.3 per 100 people – more than one prescription for every man, woman and
6 child in Nevada County.⁴³³ Compared to a national average of 81.3 opioid
7 prescriptions per 100 people in 2012,⁴³⁴ the opioid prescription rate in Nevada
8 County was 110 per 100 people that year.⁴³⁵ In 2011, the national average was
9 80.9 opioid prescriptions per 100 people,⁴³⁶ but the opioid prescription rate in
10 Nevada County was 115.4 per 100 people.⁴³⁷ Compared to a national average of

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⁴²⁹ U.S. Prescribing Rate Maps, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
14 2017).

⁴³⁰ U.S. State Prescribing Rates, 2014, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxstate2014.html> (last visited Dec. 11,
16 2017).

⁴³¹ U.S. County Prescribing Rates, 2014, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxcounty2014.html> (last visited April 18,
18 2018).

⁴³² U.S. Prescribing Rate Maps, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
19 2017).

⁴³³ U.S. County Prescribing Rates, 2013, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxcounty2013.html> (last visited April 18,
21 2018).

⁴³⁴ U.S. Prescribing Rate Maps, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
23 2017).

⁴³⁵ U.S. County Prescribing Rates, 2012, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxcounty2012.html> (last visited April 18,
25 2018).

⁴³⁶ U.S. Prescribing Rate Maps, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
27 2017).

⁴³⁷ U.S. County Prescribing Rates, 2011, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxcounty2011.html> (last visited April 18,
28 2018).

1 81.2 opioid prescriptions per 100 people in 2010,⁴³⁸ the Nevada County opioid
2 prescription rate was 119.3 per 100 people – an all-time high for Nevada
3 County.⁴³⁹ In 2009, the national average was 79.5 opioid prescriptions per 100
4 people,⁴⁴⁰ but the rate in Nevada County was 111.8 per 100.⁴⁴¹ Compared to a
5 national average of 78.2 opioid prescriptions per 100 people in 2008⁴⁴² and 55.1 in
6 California,⁴⁴³ the Nevada County rate was 104.8 per 100 people.⁴⁴⁴ In 2007, the
7 national average was 75.9 opioid prescriptions per 100 people,⁴⁴⁵ but the Nevada
8 County rate was 102.1 per 100 people.⁴⁴⁶ Compared to a national average of 72.4
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13 ⁴³⁸ U.S. Prescribing Rate Maps, CDC, available at
14 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
2017).

15 ⁴³⁹ U.S. County Prescribing Rates, 2010, CDC, available at
16 <https://www.cdc.gov/drugoverdose/maps/rxcounty2010.html> (last visited April 18,
2018).

17 ⁴⁴⁰ U.S. Prescribing Rate Maps, CDC, available at
18 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
2017).

19 ⁴⁴¹ U.S. County Prescribing Rates, 2009, CDC, available at
20 <https://www.cdc.gov/drugoverdose/maps/rxcounty2009.html> (last visited April 18,
2018).

21 ⁴⁴² U.S. Prescribing Rate Maps, CDC, available at
22 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
2017).

23 ⁴⁴³ U.S. State Prescribing Rates, 2018, CDC, available at
24 <https://www.cdc.gov/drugoverdose/maps/rxstate2008.html> (last visited Dec. 11,
2017).

25 ⁴⁴⁴ U.S. County Prescribing Rates, 2008, CDC, available at
26 <https://www.cdc.gov/drugoverdose/maps/rxcounty2008.html> (last visited April 18,
2018).

27 ⁴⁴⁵ U.S. Prescribing Rate Maps, CDC, available at
28 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,,
2017).

29 ⁴⁴⁶ U.S. County Prescribing Rates, 2007, CDC, available at
30 <https://www.cdc.gov/drugoverdose/maps/rxcounty2007.html> (last visited April 18,
2018).

1 opioid prescriptions per 100 people prescribed opioids in 2006,⁴⁴⁷ the Nevada
 2 County rate was 101 per 100 people.⁴⁴⁸

3 **2. Relief Sought.**

4 649. The RICO Marketing Defendants' violations of law and their pattern
 5 of racketeering activity directly and proximately caused The County injury in its
 6 business and property. The RICO Marketing Defendants' pattern of racketeering
 7 activity logically, substantially and foreseeably caused an opioid epidemic. The
 8 County's injuries, as described below, were not unexpected, unforeseen or
 9 independent.⁴⁴⁹ Rather, as Plaintiffs allege, the RICO Marketing Defendants
 10 knew that the opioids were unsuited to treatment of long-term chronic, non-acute,
 11 and non-cancer pain, or for any other use not approved by the FDA, and knew that
 12 opioids were highly addictive and subject to abuse.⁴⁵⁰ Nevertheless, the RICO
 13 Marketing Defendants engaged in a scheme of deception, that utilized the mail
 14 and wires as part of their fraud, in order to increase sales of their opioid products.

15 650. It was foreseeable and expected that a massive marketing campaign
 16 utilized by the RICO Marketing Defendants that misrepresented the non-addictive
 17 and effective use of prescription opioids for purposes for which they are not suited
 18 and not approved by the FDA would lead to a nationwide opioid epidemic.⁴⁵¹ It
 19 was also foreseeable and expected that the RICO Marketing Defendants'
 20 marketing campaign would lead to increased opioid addiction and overdose.⁴⁵²

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⁴⁴⁷ U.S. Prescribing Rate Maps, CDC, available at
 23 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 24 2017).

25 ⁴⁴⁸ U.S. County Prescribing Rates, 2006, CDC, available at
 26 <https://www.cdc.gov/drugoverdose/maps/rxcounty2006.html> (last visited April 18,
 27 2018).

28 ⁴⁴⁹ Traveler's Property Casualty Company of America v. Actavis, Inc., 22 Cal.
 29 Rptr. 3d 5, 19 (Cal. Ct. App. 2017).

30 ⁴⁵⁰ *Id.*

31 ⁴⁵¹ *Id.*

32 ⁴⁵² *Id.*

1 The County's injuries were logically, foreseeable, and substantially caused by the
2 opioid epidemic that the RICO Marketing Defendants created.

3 651. Specifically, the RICO Marketing Defendants' predicate acts and
4 pattern of racketeering activity caused the opioid epidemic which has injured The
5 County in the form of substantial losses of money and property that logically,
6 directly and foreseeably arise from the opioid-addiction epidemic. The County's
7 injuries, as alleged throughout this complaint, and expressly incorporated herein
8 by reference, include:

- 9 a. Losses caused by purchasing and/or paying reimbursements for the
10 RICO Marketing Defendants' prescription opioids, that The County
11 would not have paid for or purchased but for the RICO Marketing
12 Defendants' conduct;
- 13 b. Losses caused by the decrease in funding available for The County's
14 public services for which funding was lost because it was diverted to
15 other public services designed to address the opioid epidemic;
- 16 c. Costs for providing healthcare and medical care, additional therapeutic,
17 and prescription drug purchases, and other treatments for patients
18 suffering from opioid-related addiction or disease, including overdoses
19 and deaths;
- 20 d. Costs of training emergency and/or first responders in the proper
21 treatment of drug overdoses;
- 22 e. Costs associated with providing police officers, firefighters, and
23 emergency and/or first responders with Naloxone – an opioid antagonist
24 used to block the deadly effects of opioids in the context of overdose;
- 25 f. Costs associated with emergency responses by police officers,
26 firefighters, and emergency and/or first responders to opioid overdoses;

- 1 g. Costs for providing mental-health services, treatment, counseling,
2 rehabilitation services, and social services to victims of the opioid
3 epidemic and their families;
- 4 h. Costs for providing treatment of infants born with opioid-related medical
5 conditions, or born addicted to opioids due to drug use by mother during
6 pregnancy;
- 7 i. Costs associated with law enforcement and public safety relating to the
8 opioid epidemic, including but not limited to attempts to stop the flow of
9 opioids into local communities, to arrest and prosecute street-level
10 dealers, to prevent the current opioid epidemic from spreading and
11 worsening, and to deal with the increased levels of crimes that have
12 directly resulted from the increased homeless and drug-addicted
13 population;
- 14 j. Costs associated with increased burden on the County's judicial system,
15 including increased security, increased staff, and the increased cost of
16 adjudicating criminal matters due to the increase in crime directly
17 resulting from opioid addiction;
- 18 k. Costs associated with providing care for children whose parents suffer
19 from opioid-related disability or incapacitation;
- 20 l. Loss of tax revenue due to the decreased efficiency and size of the
21 working population in Plaintiffs' Community;
- 22 m. Losses caused by diminished property values in neighborhoods where
23 the opioid epidemic has taken root; and
- 24 n. Losses caused by diminished property values in the form of decreased
25 business investment and tax revenue.

26 652. The County's injuries were proximately caused by the RICO
27 Marketing Defendants' racketeering activities because they were the logical,
28 substantial and foreseeable cause of The County's injuries. But for the opioid-

1 addiction epidemic created by the RICO Marketing Defendants' conduct, The
2 County would not have lost money or property.

3 653. The County's injuries were directly caused by the RICO Marketing
4 Defendants' pattern of racketeering activities.

5 654. The County is the most directly harmed entity and there is no other
6 Plaintiff better suited to seek a remedy for the economic harms at issue here.

7 655. Plaintiff seeks all legal and equitable relief as allowed by law,
8 including *inter alia* actual damages, treble damages, equitable relief, forfeiture as
9 deemed proper by the Court, attorney's fees and all costs and expenses of suit and
10 pre- and post-judgment interest.

COUNT IV

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

18 U.S.C. 1961, et seq.

**(Against Defendants Purdue, Cephalon, Endo, Mallinckrodt, Actavis,
McKesson, Cardinal, and AmerisourceBergen)**

(The “Opioid Diversion Enterprise”)

17 656. Plaintiff, The County, hereby incorporates by reference all other
18 paragraphs of this Complaint as if fully set forth herein, and further alleges as
19 follows.

20 657. The County brings this Claim against the following Defendants, as
21 defined above: Purdue, Cephalon, Endo, Mallinckrodt, Actavis (the
22 “Manufacturer Defendants”), McKesson, Cardinal, and AmerisourceBergen (the
23 “Distributor Defendants”) (collectively, for purposes of this Claim, the “RICO
24 Diversion Defendants”).

25 658. The RICO Diversion Defendants conducted and continue to conduct
26 their business through legitimate and illegitimate means in the form of an
27 association-in-fact enterprise and/or a legal entity enterprise as defined in 18
28 U.S.C. § 1961(4). Alternatively, the RICO Diversion Defendants were members

1 of a legal entity enterprise within the meaning of 18 U.S.C. § 1961(4).
2 Specifically, each of the RICO Diversion Defendants was a member of the
3 Healthcare Distribution Alliance (the “HDA”)⁴⁵³ which is a distinct legal entity
4 that satisfies the definition of a RICO enterprise because it is a non-profit
5 corporation and, therefore, and “enterprise” within the definition set out in 18
6 U.S.C. § 1961(4). On information and belief, each of the RICO Diversion
7 Defendants is a member, participant, and/or sponsor of the HDA and utilized the
8 HDA to conduct the Opioid Diversion Enterprise and to engage in the pattern of
9 racketeering activity that gives rise to this cause of action. The legal and
10 association-in-fact enterprises alleged in the previous and subsequent paragraphs
11 are pleaded in the alternative and are collectively referred to as the “Opioid
12 Diversion Enterprise.”

13 659. For over a decade, the RICO Diversion Defendants aggressively
14 sought to bolster their revenue, increase profit, and grow their share of the
15 prescription painkiller market by unlawfully and surreptitiously increasing the
16 volume of opioids they sold. However, the RICO Diversion Defendants are not
17 permitted to engage in a limitless expansion of their sales through the unlawful
18 sales of regulated painkillers. As “registrants” under the Controlled Substances
19 Act, 21 U.S.C. § 821, *et seq.* (the “CSA”), the RICO Diversion Defendants
20 operated and continue to operate within a “closed-system.” The CSA restricts the
21 RICO Diversion Defendants’ ability to manufacture or distribute Schedule II
22 substances like opioids by: (1) requiring them to make sales within a limited quota
23 set by the DEA for the overall production of Schedule II substances like opioids;
24 (2) register to manufacture or distribute opioids; (3) maintain effective controls
25 against diversion of the controlled substances that they manufacturer or distribute;

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⁴⁵³ Health Distribution Alliance, History, Health Distribution Alliance, (last accessed on September 15, 2017), <https://www.healthcaredistribution.org/about/hda-history>.

1 and (4) design and operate a system to identify suspicious orders of controlled
 2 substances, halt such unlawful sales, and report them to the DEA.

3 660. The closed-system created by the CSA, and the establishment of
 4 quotas, was specifically intended to reduce or eliminate the diversion of Schedule
 5 II substances like opioids from “legitimate channels of trade” to the illicit market
 6 by controlling the “quantities of the basic ingredients needed for the manufacture
 7 of [controlled substances].”⁴⁵⁴

8 661. Finding it impossible to legally achieve their ever increasing sales
 9 ambitions, members of the Opioid Diversion Enterprise (defined below) engaged
 10 in the common purpose of fraudulently increasing the quotas that governed the
 11 manufacture and distribution of their prescription opioids. The RICO Diversion
 12 Defendants formed and pursued their common purpose through the many personal
 13 interactions that they had, confidentially, in organizations like the Pain Care
 14 Forum and the Healthcare Distribution Alliance.

15 662. The RICO Diversion Defendants’ common purpose and fraudulent
 16 scheme to unlawfully increase the DEA quotas violated the RICO Act in two
 17 ways. First, the RICO Diversion Defendants violated the RICO Act because they
 18 engaged in the felonious manufacture, buying selling, or otherwise dealing in
 19 controlled substances that are punishable by law in the United States.
 20 Specifically, the RICO Diversion Defendants “furnish[ed] false or fraudulent
 21 material information in, or omit[ted] material information from, applications,
 22 reports, records, and other document required to be made, kept, and filed under
 23 U.S.C. §§ 801, et seq.”, in violation of 21 U.S.C. § 843(b), which is a felony.
 24 Second, the RICO Diversion Defendants violated the RICO Act by engaging in
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26 ⁴⁵⁴ 1970 U.S.C.C.A.N. 4566 at 5490; *see also* Testimony of Joseph T. Rannazzisi
 27 before the Caucus on International Narcotics Control, United States Senate, May 5,
 28 2015 (available at https://www.drugcaucus.senate.gov/sites/default/files/Rannazzisi%20Testimony_0.pdf).

1 mail and wire fraud. The RICO Diversion Defendants common purpose and
2 fraudulent scheme was intended to, and did, utilize interstate mail and wire
3 facilities for the commission of their fraud in violation 18 U.S.C. §§ 1341 (mail
4 fraud) and 1343 (wire fraud).

5 663. The RICO Diversion Defendants' fraudulent scheme arises at the
6 intersection between the quotas governing the RICO Diversion Defendants'
7 prescription opioids and the RICO Diversion Defendants' duty to identify, report,
8 and halt suspicious orders of controlled substances. The RICO Diversion
9 Defendants' formed an enterprise with the intent to fraudulently increase the
10 quotas for prescription opioids by refusing to identify, report and halt suspicious
11 orders, thereby omitting both the fact and the RICO Diversion Defendants'
12 knowledge of widespread diversion of prescription opioids into illegitimate
13 channels.

14 664. The RICO Diversion Defendants engaged in systematic and
15 fraudulent acts as part of the Opioid Diversion Enterprise, that furnished false or
16 fraudulent material information in, and omitted material information from their
17 applications, reports, records and other documents that the RICO Defendants were
18 required to make, keep and/or file. Furthermore, the RICO Diversion Defendants
19 engaged in systematic and fraudulent acts as part of the Opioid Diversion
20 Enterprise that were intended to and actually did utilize the mail and wire facilities
21 of the United States and California, including refusing to maintain effective
22 controls against diversion of their drugs, to design and operate a system to identify
23 suspicious orders of their drugs, to halt unlawful sales of suspicious orders, and to
24 notify the DEA of suspicious orders.⁴⁵⁵

25 665. Through the RICO Diversion Defendants' scheme, members of the
26 Opioid Diversion Enterprise repeatedly requested increases of the quotas
27

28 ⁴⁵⁵ 21 U.S.C. § 823(a)(1), (b)(1); 21 C.F.R. § 1301.74(b)-(c).

1 governing the manufacture, sale and distribution of prescription opioids,
2 misrepresented that they were complying with their duties under the CSA,
3 furnished false or fraudulent material information in, and omitted material
4 information from their applications, reports, records and other documents,
5 engaged in unlawful sales of painkillers that resulted in diversion of controlled
6 substances through suspicious orders, and refused to identify or report suspicious
7 orders of controlled substances sales to the DEA.⁴⁵⁶ Defendants' refusal to report
8 suspicious orders resulted in artificial and illegal increases in the annual
9 production quotas for opioids allowed by the DEA. The end result of the RICO
10 Diversion Defendants' fraudulent scheme and common purpose was continually
11 increasing quotas that generated obscene profits and, in turn, fueled an opioid
12 epidemic.

13 666. The RICO Diversion Defendants' illegal scheme was hatched by an
14 enterprise between the Manufacturer Defendants and the Distributor Defendants,
15 and executed in perfect harmony by each of them. In particular, each of the RICO
16 Diversion Defendants were associated with, and conducted or participated in, the
17 affairs of the Opioid Diversion Enterprise, whose common purpose was
18 fraudulently increase the quotas governing the manufacture and sale of
19 prescription opioids.

20 667. The success of the RICO Diversion Defendants' scheme allowed
21 them to unlawfully increase and/or maintain high production quotas and, as a
22 direct result, allowed them to make billions from the unlawful sale and diversion
23 of opioids.

24 668. Simultaneously, the opioid epidemic created by the RICO Diversion
25 Defendants' actions caused The County's multi-million dollar injuries. The
26 County's injuries were and is a reasonably foreseeable consequence of the
27

28 ⁴⁵⁶ 21 C.F.R. § 1303.11(b); 21 C.F.R. § 1303.23.

1 prescription opioid addiction epidemic that the RICO Diversion Defendants
 2 created by fraudulently increasing quotas, misrepresenting their compliance with
 3 their duties under the CSA, and allowing the widespread diversion of legally
 4 produced prescription opioids into the illicit market. As explained in detail below,
 5 the RICO Diversion Defendants' misconduct violated Section 1962(c) and the
 6 County is entitled to treble damages for their injuries under 18 U.S.C. § 1964(c).

7 **A. THE OPIOID DIVERSION ENTERPRISE.**

8 669. Recognizing that there is a need for greater scrutiny over controlled
 9 substances due to their potential for abuse and danger to public health and safety,
 10 the United States Congress enacted the Controlled Substances Act in 1970.⁴⁵⁷ The
 11 CSA and its implementing regulations created a closed-system of distribution for
 12 all controlled substances and listed chemicals.⁴⁵⁸ Congress specifically designed
 13 the closed chain of distribution to prevent the diversion of legally produced
 14 controlled substances into the illicit market.⁴⁵⁹ Congress was concerned with the
 15 diversion of drugs out of legitimate channels of distribution and acted to halt the
 16 "widespread diversion of [controlled substances] out of legitimate channels into
 17 the illegal market."⁴⁶⁰ Moreover, the closed-system was specifically designed to
 18 ensure that there are multiple ways of identifying and preventing diversion
 19 through active participation by registrants within the drug delivery chain.⁴⁶¹ All
 20

21 ⁴⁵⁷ Joseph T. Rannazzisi Decl. ¶ 4, *Cardinal Health, Inc. v. Eric Holder, Jr., Attorney General*, D.D.C. Case No. 12-cv-185 (Document 14-2 February 10, 2012).

22 ⁴⁵⁸ See H.R. Rep. No. 91-1444, 1970 U.S.C.C.A.N. at 4566.

23 ⁴⁵⁹ *Gonzalez v. Raich*, 545 U.S. 1, 12-14 (2005); 21 U.S.C. § 801(20; 21 U.S.C. §§ 821-824, 827, 880; H.R. Rep. No. 91-1444, 1970 U.S.C.C.A.N. 4566, 4572 (Sept. 10, 1970).

24 ⁴⁶⁰ See Testimony of Joseph T. Rannazzisi before the Caucus on International Narcotics Control, United States Senate, May 5, 2015 (available at https://www.drugcaucus.senate.gov/sites/default/files/Rannazzisi%20Testimony_0.pdf).

25 ⁴⁶¹ See Statement of Joseph T. Rannazzisi before the Caucus on International Narcotics Control United States Senate, July 18, 2012 (available at

1 registrants -- manufacturers and distributors alike -- must adhere to the specific
 2 security, recordkeeping, monitoring and reporting requirements that are designed
 3 to identify or prevent diversion.⁴⁶² When registrants at any level fail to fulfill their
 4 obligations, the necessary checks and balances collapse.⁴⁶³ The result is the
 5 scourge of addiction that has occurred

6 670. Central to the closed-system created by the CSA was the directive
 7 that the DEA determine quotas of each basic class of Schedule I and II controlled
 8 substances each year. The quota system was intended to reduce or eliminate
 9 diversion from “legitimate channels of trade” by controlling the “quantities of the
 10 basic ingredients needed for the manufacture of [controlled substances], and the
 11 requirement of order forms for all transfers of these drugs.”⁴⁶⁴ When evaluating
 12 production quotas, the DEA was instructed to consider the following information:

- 13 a. Information provided by the Department of Health and Human Services;
- 14 b. Total net disposal of the basic class by all manufacturers;
- 15 c. Trends in the national rate of disposal of the basic class;
- 16 d. An applicant’s production cycle and current inventory position;
- 17 e. Total actual or estimated inventories of the class and of all substances
 manufactured from the class and trends in inventory accumulation; and
- 18 f. Other factors such as: changes in the currently accepted medical use of
 substances manufactured for a basic class; the economic and physical

22
 23 <https://www.justice.gov/sites/default/files/testimonies/witnesses/attachments/07/18/12/07-18-12-dea-rannazzisi.pdf>).

24 ⁴⁶² Id.

25 ⁴⁶³ Joseph T. Rannazzisi Decl. ¶ 10, *Cardinal Health, Inc. v. Eric Holder, Jr., Attorney General*, D.D.C. Case No. 12-cv-185 (Document 14-2 February 10, 2012).

26 ⁴⁶⁴ 1970 U.S.C.C.A.N. 4566 at 5490; *see also* Testimony of Joseph T. Rannazzisi before the Caucus on International Narcotics Control, United States Senate, May 5, 2015 (available at https://www.drugcaucus.senate.gov/sites/default/files/Rannazzisi%20Testimony_0.pdf).

1 availability of raw materials; yield and sustainability issues; potential
 2 disruptions to production; and unforeseen emergencies.⁴⁶⁵

3 671. It is unlawful for a registrant to manufacture a controlled substance in
 4 Schedule II, like prescription opioids, that is (1) not expressly authorized by its
 5 registration and by a quota assigned to it by DEA, or (2) in excess of a quota
 6 assigned to it by the DEA.⁴⁶⁶

7 672. At all relevant times, the RICO Diversion Defendants operated as an
 8 association-in-fact enterprise formed for the purpose of unlawfully increasing
 9 sales, revenues and profits by fraudulently increasing the quotas set by the DEA
 10 that would allow them to collectively benefit from a greater pool of prescription
 11 opioids to manufacture and distribute. In support of this common purpose and
 12 fraudulent scheme, the RICO Diversion Defendants jointly agreed to disregard
 13 their statutory duties to identify, investigate, halt and report suspicious orders of
 14 opioids and diversion of their drugs into the illicit market so that those orders
 15 would not result in a decrease, or prevent an increase in, the necessary quotas.
 16 The RICO Diversion Defendants conducted their pattern of racketeering activity
 17 in this jurisdiction and throughout the United States through this enterprise.

18 673. The opioid epidemic has its origins in the mid-1990s when, between
 19 1997 and 2007, per capita purchase of methadone, hydrocodone, and oxycodone
 20 increased 13-fold, 4-fold, and 9-fold, respectively. By 2010, enough prescription
 21 opioids were sold in the United States to medicate every adult in the country with
 22 a dose of 5 milligrams of hydrocodone every 4 hours for 1 month.⁴⁶⁷ On
 23
 24

⁴⁶⁵ See Testimony of Joseph T. Rannazzisi before the Caucus on International Narcotics Control, United State Senate, May 5, 2015 (available at https://www.drugcaucus.senate.gov/sites/default/files/Rannazzisi%20Testimony_0.pdf).

⁴⁶⁶ *Id.* (citing 21 U.S.C. 842(b)).

⁴⁶⁷ Keyes KM, Cerdá M, Brady JE, Havens JR, Galea S. Understanding the rural-urban differences in nonmedical prescription opioid use and abuse in the United States. Am J Public Health. 2014;104(2):e52-9.

1 information and belief, the Opioid Diversion Enterprise has been ongoing for at
 2 least the last decade.⁴⁶⁸

3 674. The Opioid Diversion Enterprise was and is a shockingly successful
 4 endeavor. The Opioid Diversion Enterprise has been conducting business
 5 uninterrupted since its genesis. However, it was not until recently that federal and
 6 state regulators finally began to unravel the extent of the enterprise and the toll
 7 that it exacted on the American public.

8 675. At all relevant times, the Opioid Diversion Enterprise: (a) had an
 9 existence separate and distinct from each RICO Diversion Defendant; (b) was
 10 separate and distinct from the pattern of racketeering in which the RICO
 11 Diversion Defendants engaged; (c) was an ongoing and continuing organization
 12 consisting of legal entities, including each of the RICO Diversion Defendants; (d)
 13 was characterized by interpersonal relationships among the RICO Diversion
 14 Defendants; (e) had sufficient longevity for the enterprise to pursue its purpose;
 15 and (f) functioned as a continuing unit.. Each member of the Opioid Diversion
 16 Enterprise participated in the conduct of the enterprise, including patterns of
 17 racketeering activity, and shared in the astounding growth of profits supplied by
 18 fraudulently inflating opioid quotas and resulting sales.

19 676. The Opioid Diversion Enterprise also engaged in efforts to constrain
 20 the DEA's authority to hold the RICO Diversion Defendants liable for
 21 disregarding their duty to prevent diversion. Members of the Pain Care Forum
 22 (described in greater detail below) and the Healthcare Distribution Alliance
 23 lobbied for the passage of legislation to weaken the DEA's enforcement authority.
 24 To this end, the Ensuring Patient Access and Effective Drug Enforcement Act
 25 significantly reduced the DEA's ability to issue orders to show cause and to
 26

27 28 ⁴⁶⁸ Matthew Perrone, [Pro-Painkiller echo chamber shaped policy amid drug epidemic](https://www.publicintegrity.org/2016/09/19/20201/pro-painkiller-echo-chamber-shaped-policy-amid-drug-epidemic), The Center for Public Integrity (September 19, 2017, 12:01 a.m.),
<https://www.publicintegrity.org/2016/09/19/20201/pro-painkiller-echo-chamber-shaped-policy-amid-drug-epidemic>.

1 suspend and/or revoke registrations.⁴⁶⁹ The HDA and other members of the Pain
 2 Care Forum contributed substantial amounts of money to political campaigns for
 3 federal candidates, state candidates, political action committees and political
 4 parties. Upon information and belief, the Pain Care Forum and its members and
 5 HDA, poured millions into such efforts.

6 677. The RICO Diversion Defendants, through their illegal enterprise,
 7 engaged in a pattern of racketeering activity that involves a fraudulent scheme to
 8 profit from the unlawful sale of prescription opioids by increasing the quotas
 9 governing the manufacture and sale of these controlled substances. In order to
 10 achieve that goal, the RICO Diversion Defendants knowingly allowed suspicious
 11 orders of controlled substances to occur unhindered while millions of opioid doses
 12 diverted into illegal markets. The end result of this strategy was exactly as the
 13 RICO Diversion Defendants intended – artificially increased quotas for the
 14 manufacture and distribution of opioids, all of which resulted in a National opioid
 15 epidemic.

16 678. The Opioid Diversion Enterprise engaged in, and its activities
 17 affected, interstate and foreign commerce because the enterprise involved
 18 commercial activities across states lines, such as manufacture, sale, distribution,
 19
 20

21 ⁴⁶⁹ See HDMA is now the Healthcare Distribution Alliance, Pharmaceutical
 22 Commerce, (June 13, 2016, updated July 6, 2016),
<http://pharmaceuticalcommerce.com/business-and-finance/hdma-now-healthcare-distribution-alliance/>; Lenny Bernstein & Scott Higham, *Investigation: The DEA Slowed Enforcement While the Opioid Epidemic Grew Out of Control*, Wash. Post, Oct. 22, 2016, https://www.washingtonpost.com/investigations/the-dea-slowed-enforcement-while-the-opioid-epidemic-grew-out-of-control/2016/10/22/aea2bf8e-7f71-11e6-8d13-d7c704ef9fd9_story.html; Lenny Bernstein & Scott Higham, *Investigation: U.S. Senator Calls for Investigation of DEA Enforcement Slowdown Amid Opioid Crisis*, Wash. Post, Mar. 6, 2017, https://www.washingtonpost.com/investigations/us-senator-calls-for-investigation-of-dea-enforcement-slowdown/2017/03/06/5846ee60-028b-11e7-b1e9-a05d3c21f7cf_story.html; Eric Eyre, *DEA Agent: “We Had no Leadership” in WV Amid Flood of Pain Pills*, Charleston Gazette-Mail, Feb. 18, 2017, <http://www.wvgazettemail.com/news/20170218/dea-agent-we-had-no-leadership-in-wv-amid-flood-of-pain-pills->.

1 and shipment of prescription opioids throughout the United States, and the
2 corresponding payment and/or receipt of money from such interstate sales.

3 679. Within the Opioid Diversion Enterprise, there were interpersonal
4 relationships and common communication by which the RICO Diversion
5 Defendants shared information on a regular basis. These interpersonal
6 relationships also formed the organization of the Opioid Diversion Enterprise.
7 The Opioid Diversion Enterprise used their interpersonal relationships and
8 communication network for the purpose of conducting the enterprise through a
9 pattern of racketeering activity.

10 680. Each of the RICO Diversion Defendants had systematic links to each
11 other through joint participation in trade industry organizations, contractual
12 relationships and continuing coordination of activities. The RICO Diversion
13 Defendants participated in the operation and management of the Opioid Diversion
14 Enterprise by directing its affairs, as described herein. While the RICO Diversion
15 Defendants participated in, and are members of, the enterprise, they each have a
16 separate existence from the enterprise, including distinct legal statuses, different
17 offices and roles, bank accounts, officers, directors, employees, individual
18 personhood, reporting requirements, and financial statements.

19 681. The RICO Diversion Defendants exerted substantial control over the
20 Opioid Diversion Enterprise through their membership in the Pain Care Forum,
21 the HDA, and through their contractual relationships.

22 682. The Pain Care Forum (“PCF”) has been described as a coalition of
23 drug makers, trade groups and dozens of non-profit organizations supported by
24 industry funding. The PCF recently became a national news story when it was
25 discovered that lobbyists for members of the PCF quietly shaped federal and state
26 policies regarding the use of prescription opioids for more than a decade.

27 683. The Center for Public Integrity and The Associated Press obtained
28 “internal documents shed[ding] new light on how drug makers and their allies

1 shaped the national response to the ongoing wave of prescription opioid abuse.”⁴⁷⁰
 2 Specifically, PCF members spent over \$740 million lobbying in the nation’s
 3 capital and in all 50 statehouses on an array of issues, including opioid-related
 4 measures.⁴⁷¹

5 684. Not surprisingly, each of the RICO Diversion Defendants who stood
 6 to profit from expanded prescription opioid use is a member of and/or participant
 7 in the PCF.⁴⁷² In 2012, membership and participating organizations included the
 8 HDA (of which all RICO Defendants are members), Endo, Purdue, Actavis (i.e.,
 9 Allergan), and Teva (the parent company of Cephalon).⁴⁷³ Each of the
 10 Manufacturer Defendants worked together through the PCF to advance the
 11 interests of the enterprise. But, the Manufacturer Defendants were not alone. The
 12 Distributor Defendants actively participated, and continue to participate in the
 13 PCF, at a minimum, through their trade organization, the HDA.⁴⁷⁴ Upon
 14 information and belief, the Distributor Defendants participated directly in the PCF
 15 as well.

16 685. Additionally, the HDA – or Healthcare Distribution Alliance – led to
 17 the formation of interpersonal relationships and an organization between the
 18

19 20⁴⁷⁰ Matthew Perrone, Pro-Painkiller echo chamber shaped policy amid drug
 21 epidemic, The Center for Public Integrity (September 19, 2017, 12:01 a.m.),
<https://www.publicintegrity.org/2016/09/19/20201/pro-painkiller-echo-chamber-shaped-policy-amid-drug-epidemic> (emphasis added).

22 23⁴⁷¹ *Id.*

24 25⁴⁷² PAIN CARE FORUM 2012 Meetings Schedule, (last updated December 2011),
<https://assets.documentcloud.org/documents/3108982/PAIN-CARE-FORUM-Meetings-Schedule-amp.pdf>

26 27⁴⁷³ *Id.* Upon information and belief, Mallinckrodt became an active member of the
 28 PCF sometime after 2012.

29 30⁴⁷⁴ *Id.* The Executive Committee of the HDA (formerly the HDMA) currently
 31 includes the Chief Executive Officer, Pharmaceutical Segment for Cardinal Health,
 32 Inc., the Group President, Pharmaceutical Distribution and Strategic Global Source
 33 for AmerisourceBergen Corporation, and the President, U.S. Pharmaceutical for
 34 McKesson Corporation. Executive Committee, Healthcare Distribution Alliance
 35 (accessed on September 14, 2017),
<https://www.healthcaredistribution.org/about/executive-committee>.

1 RICO Diversion Defendants. Although the entire HDA membership directory is
 2 private, the HDA website confirms that each of the Distributor Defendants and the
 3 Manufacturer Defendants named in the Complaint, including Actavis (i.e.,
 4 Allergan), Endo, Purdue, Mallinckrodt and Cephalon were members of the
 5 HDA.⁴⁷⁵ Additionally, the HDA and each of the Distributor Defendants, eagerly
 6 sought the active membership and participation of the Manufacturer Defendants
 7 by advocating for the many benefits of members, including “strengthening . . .
alliances.”⁴⁷⁶

8 686. Beyond strengthening alliances, the benefits of HDA membership
 9 included the ability to, among other things, “network one on one with
 10 manufacturer executives at HDA’s members-only Business and Leadership
 11 Conference,” “networking with HDA wholesale distributor members,”
 12 “opportunities to host and sponsor HDA Board of Directors events,” “participate
 13 on HDA committees, task forces and working groups with peers and trading
 14 partners,” and “make connections.”⁴⁷⁷ Clearly, the HDA and the Distributor
 15 Defendants believed that membership in the HDA was an opportunity to create
 16 interpersonal and ongoing organizational relationships and “alliances” between
 17 the Manufacturers and Defendants.

18 687. The application for manufacturer membership in the HDA further
 19 indicates the level of connection between the RICO Defendants and the level of
 20 insight that they had into each other’s businesses.⁴⁷⁸ For example, the
 21

22
 23 ⁴⁷⁵ Manufacturer Membership, Healthcare Distribution Alliance, (accessed on
 24 September 14, 2017),
<https://www.healthcaredistribution.org/about/membership/manufacturer>.

25 ⁴⁷⁶ Manufacturer Membership Benefits, Healthcare Distribution Alliance, (accessed
 26 on September 14, 2017),
<https://www.healthcaredistribution.org/~media/pdfs/membership/manufacturer-membership-benefits.ashx?la=en>.

27 ⁴⁷⁷ *Id.*

28 ⁴⁷⁸ Manufacturer Membership Application, Healthcare Distribution Alliance,
 (accessed on September 14, 2017),

1 manufacturer membership application must be signed by a “senior company
2 executive,” and it requests that the manufacturer applicant identify a key contact
3 and any additional contacts from within its company.

4 688. The HDA application also requests that the manufacturer identify its
5 current distribution information, including the facility name and contact
6 information.

689. And, Manufacturer Members were asked to identify their “most
recent year end net sales” through wholesale distributors, including the Distributor
Defendants AmerisourceBergen, Cardinal Health, and McKesson and their
subsidiaries.

11 690. The closed meetings of the HDA's councils, committees, task forces
12 and working groups provided the Manufacturer and Distributor Defendants with
13 the opportunity to work closely together, confidentially, to develop and further the
14 common purpose and interests of the enterprise.

15 691. The HDA also offers a multitude of conferences, including annual
16 business and leadership conferences. The HDA, and the Distributor Defendants
17 advertise these conferences to the Manufacturer Defendants as an opportunity to
18 “bring together high-level executives, thought leaders and influential managers . . .
19 . to hold strategic business discussions on the most pressing industry issues.”⁴⁷⁹
20 The conferences also gave the Manufacturer and Distributor Defendants
21 “unmatched opportunities to network with [their] peers and trading partners at all
22 levels of the healthcare distribution industry.”⁴⁸⁰ The HDA and its conferences

24 https://www.healthcaredistribution.org/~media/pdfs/membership/manufacturer-
25 membership-application.ashx?la=en.

⁴⁷⁹ Business and Leadership Conference – Information for Manufacturers, Healthcare Distribution Alliance<https://www.healthcaredistribution.org/events/2015-business-and-leadership-conference/blc-for-manufacturers> (last accessed on September 14, 2017).

28 | 480 *Id*

were significant opportunities for the Manufacturer and Distributor Defendants to interact at a high-level of leadership. It is clear that the Manufacturer Defendants embraced this opportunity by attending and sponsoring these events.⁴⁸¹

692. Third, the RICO Diversion Defendants maintained their interpersonal relationships by working together, through contractual chargeback arrangements, to exchanging sales information and drive the unlawful sales of their opioids. To this end, the Manufacturer Defendants engaged in an industry-wide practice of paying rebates to the Distributor Defendants for sales of prescription opioids.⁴⁸²

693. For example, the *Washington Post* reported that “[o]n Aug. 23, 2011, DEA supervisors met with Mallinckrodt executives at the agency’s headquarters in Arlington, Va., the day a rare 5.8-magnitude earthquake hit the Washington region. People involved in the case still call the gathering ‘the earthquake meeting.’ DEA officials showed the company the remarkable amounts of its oxycodone going to distributors and the number of arrests being made for oxycodone possession and distribution on the street, according to one participant in the meeting who also spoke on the condition of anonymity because the case is pending.”⁴⁸³

⁴⁸¹ 2015 Distribution Management Conference and Expo, Healthcare Distribution Alliance, <https://www.healthcaredistribution.org/events/2015-distribution-management-conference> (last accessed on September 14, 2017).

⁴⁸² Lenny Bernstein & Scott Higham, The government’s struggle to hold opioid manufacturers accountable, The Washington Post, (April 2, 2017), https://www.washingtonpost.com/graphics/investigations/dea-mallinckrodt/?utm_term=.b24cc81cc356; see also, Letter from Sen. Claire McCaskill, (July 27, 2017), <https://www.mccaskill.senate.gov/imo/media/image/july-opioid-investigation-letter-manufacturers.png>; Letter from Sen. Claire McCaskill, (July 27, 2017), <https://www.mccaskill.senate.gov/imo/media/image/july-opioid-investigation-letter-manufacturers.png>; Letters From Sen. Claire McCaskill, (March 28, 2017), <https://www.mccaskill.senate.gov/opioid-investigation>; Purdue Managed Markets, Purdue Pharma, (accessed on September 14, 2017), <http://www.purduepharma.com/payers/managed-markets/>.

⁴⁸³ https://www.washingtonpost.com/graphics/investigations/dea-mallinckrodt/?utm_term=.f336835fd5da

1 694. “Three weeks after the Aug. 23 meeting, Mallinckrodt notified 43 of
2 its distributors that they would no longer receive rebates from the company if they
3 continued to supply certain pharmacies whose orders appeared to be
4 suspicious.”⁴⁸⁴

5 695. “On Nov. 30, 2011, the DEA served a subpoena on Mallinckrodt,
6 demanding documents related to its suspicious-order-monitoring program,
7 according to the company’s filings with the Securities and Exchange Commission.
8 The subpoena brought a windfall of information. The DEA gained access to data
9 from Mallinckrodt’s rebate or ‘chargeback’ program, an industry-wide practice
10 that provides reimbursements to wholesale distributors. That information and
11 other records showed where Mallinckrodt’s oxycodone was going — from the
12 company to its network of distributors to retailers down the chain.”⁴⁸⁵

13 696. In addition, the Distributor Defendants and Manufacturer Defendants
14 participated, through the HDA, in Webinars and other meetings designed to
15 exchange detailed information regarding their prescription opioid sales, including
16 purchase orders, acknowledgements, ship notices, and invoices.⁴⁸⁶ For example,
17 on April 27, 2011, the HDA offered a Webinar to “accurately and effectively
18 exchange business transactions between distributors and manufacturers...”:

19

20

21

22

23

24

25

26

⁴⁸⁴ Id.

27

⁴⁸⁵ Id.

28

⁴⁸⁶ Webinars, Healthcare Distribution Alliance, (accessed on September 14, 2017), <https://www.healthcaredistribution.org/resources/webinar-leveraging-edi>.

1 Webinar Leveraging EDI: Order-to-Cash 2 Transactions CD Box Set



3 4 5 6 7 8 9
 (Webinar held: April 27, 2011) Using EDI to
 accurately and efficiently exchange business
 transactions (i.e., purchase orders,
 acknowledgements, ship notices, invoices, etc.)
 between distributors and manufacturers in the
 healthcare supply chain is critical. The
 development and use of voluntary guidelines
 for specific EDI standards provide industry

10 11 12 13
 trading partners with a means to effectively convey the necessary information.

14 15 16 17 18 19
 Hear updates on HDMA's Order-to-Cash Guidelines for Electronic Data Interchange (EDI) in the
 Healthcare Product Supply Chain, including the 810 Invoice; 850 Purchase Order; 855 Purchase
 Order Acknowledgement; and the 856 Ship Notice/Manifest.

20 21 22 23 24 25 26 27 28
 697. On information and belief, the Manufacturer Defendants used this
 information to gather high-level data regarding overall distribution and direct the
 Distributor Defendants on how to most effectively sell the prescription opioids.

698. And, through the HDA, Manufacturer Members were asked to
 identify their "most recent year end net sales" through wholesale distributors,
 including the Distributor Defendants as follows:

Company	Most Recent Year End Net Sales
Henry Schein, Inc.	
Henry Schein Distribution Centers (7)	
Hospital Pharmaceutical Consulting (1)	
KeySource Medical, Inc. (1)	
Louisiana Wholesale Drug Co. Inc. (1)	
McKesson Corporation (71)	
McKesson Supply Solutions (25)	
McKesson Canada (12)	
McKesson Corporation (4)	
McKesson Specialty Health (1)	
McKesson Strategic Redistribution Center (1)	
McKesson Medical Surgical (1)	
Physician Sales & Service (PSS) (25)	
US Oncology (1)	
DeVictoria Healthcare, Inc. PR (1)	
Miami-Lukes, Inc. (1)	
Morris & Dickson Co., LLC (1)	
Mutual Wholesale Drug Co. (1)	
PBA Health (1)	
Prescription Supply, Inc. (1)	
Prodigy Health Supplier Corporation (1)	
Quality Care Products, LLC (1)	
RDC (3)	
R&S Northeast LLC (2)	
Richie Pharmaceutical Co., LLC (1)	
Seacoast Medical LLC (1)	
Smith Drug Company, Div. J.M. Smith Corporation (4)	
Burlington Drug Company, Inc. (1)	
Smith Drug Company, Div. J.M. Smith Corporation (3)	
Top Rx (4)	
Value Drug Company (1)	
VaxServe (1)	
TOTAL SALES (millions)	
\$ 0	

1 699. The contractual relationships among the RICO Defendants also
2 include vault security programs. The RICO Diversion Defendants are required to
3 maintain certain security protocols and storage facilities for the manufacture and
4 distribution of their opiates. Upon information and belief, the manufacturers
5 negotiated agreements whereby the Manufacturers installed security vaults for
6 Distributors in exchange for agreements to maintain minimum sales performance
7 thresholds. Upon information and belief, these agreements were used by the
8 RICO Diversion Defendants as a tool to violate their reporting and diversion
9 duties in order to reach the required sales requirements.

10 700. Taken together, the interaction and length of the relationships
11 between and among the Manufacturer and Distributor Defendants reflects a deep
12 level of interaction and cooperation between two groups in a tightly knit industry.
13 The Manufacturer and Distributor Defendants were not two separate groups
14 operating in isolation or two groups forced to work together in a closed system.
15 The RICO Diversion Defendants operated together as a united entity, working
16 together on multiple fronts, to engage in the unlawful sale of prescription opioids.
17 The HDA and the Pain Care Forum are but two examples of the overlapping
18 relationships, and concerted joint efforts to accomplish common goals and
19 demonstrates that the leaders of each of the RICO Diversion Defendants were in
20 communication and cooperation.

21 701. Alternatively, the RICO Diversion Defendants were members of a
22 legal entity enterprise within the meaning of 18 U.S.C. § 1961(4), through which
23 the RICO Diversion Defendants conducted their pattern of racketeering activity in
24 this jurisdiction and throughout the United States. As alleged, the Healthcare
25 Distribution Alliance (the “HDA”)⁴⁸⁷ is a distinct legal entity that satisfies the
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⁴⁸⁷ Health Distribution Alliance, History, Health Distribution Alliance, (last
28 accessed on September 15, 2017),
<https://www.healthcaredistribution.org/about/hda-history>.

1 definition of a RICO enterprise because it is a corporation formed under the laws
2 of the District of Columbia, doing business in Virginia. As such, the HDA
3 qualifies as an “enterprise” within the definition set out in 18 U.S.C. § 1961(4).

4 702. On information and belief, each of the RICO Diversion Defendants is
5 a member, participant, and/or sponsor of the HDA, and has been since at least
6 2006, and utilized the HDA to conduct the Opioid Diversion Enterprise and to
7 engage in the pattern of racketeering activity that gives rise to the Count.

8 703. Each of the RICO Diversion Defendants is a legal entity separate and
9 distinct from the HDA. Additionally, the HDA serves the interests of distributors
10 and manufacturers beyond the RICO Diversion Defendants. Therefore, the HDA
11 exists separately from the Opioid Diversion Enterprise, and each of the RICO
12 Diversion Defendants exists separately from the HDA. Therefore, the HDA may
13 serve as a RICO enterprise.

14 **B. CONDUCT OF THE OPIOID DIVERSION ENTERPRISE.**

15 704. During the time period alleged in this Complaint, the RICO
16 Diversion Defendants exerted control over, conducted and/or participated in the
17 Opioid Diversion Enterprise by fraudulently claiming that they were complying
18 with their duties under the CSA to identify, investigate and report suspicious
19 orders of opioids in order to prevent diversion of those highly addictive substances
20 into the illicit market, and to halt such unlawful sales, so as to increase production
21 quotas and generate unlawful profits, as follows:

22 705. Defendants disseminated false and misleading statements to state and
23 federal regulators claiming that (1) the quotas for prescription opioids should be
24 increased, (2) they were complying with their obligations to maintain effective
25 controls against diversion of their prescription opioids, (3) they were complying
26 with their obligations to design and operate a system to disclose to the registrant
27 suspicious orders of their prescription opioids, (4) they were complying with their
28 obligation to notify the DEA of any suspicious orders or diversion of their

1 prescription opioids and (5) they did not have the capability to identify suspicious
 2 orders of controlled substances despite their possession of national, regional, state,
 3 and local prescriber- and patient-level data that allowed them to track prescribing
 4 patterns over time, which the Defendants obtained from data companies, including
 5 but not limited to: IMS Health, QuintilesIMS, Iqvia, Pharmaceutical Data
 6 Services, Source Healthcare Analytics, NDS Health Information Services,
 7 Verispan, Quintiles, SDI Health, ArcLight, Scriptline, Wolters Kluwer, and/or
 8 PRA Health Science, and all of their predecessors or successors in interest (the
 9 “Data Vendors”).

10 706. The RICO Diversion Defendants applied political and other pressure
 11 on the DOJ and DEA to halt prosecutions for failure to report suspicious orders of
 12 prescription opioids and lobbied Congress to strip the DEA of its ability to
 13 immediately suspend registrations pending investigation by passing the “Ensuring
 14 Patient Access and Effective Drug Enforcement Act.”⁴⁸⁸

15 707. The Distributor Defendants developed “know your customer”
 16 questionnaires and files. This information, compiled pursuant to comments from
 17 the DEA in 2006 and 2007 was intended to help the RICO Diversion Defendants
 18 identify suspicious orders or customers who were likely to divert prescription
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21 ⁴⁸⁸ See HDMA is now the Healthcare Distribution Alliance, Pharmaceutical
 22 Commerce, (June 13, 2016, updated July 6, 2016),
<http://pharmaceuticalcommerce.com/business-and-finance/hdma-now-healthcare-distribution-alliance/>; Lenny Bernstein & Scott Higham, *Investigation: The DEA Slowed Enforcement While the Opioid Epidemic Grew Out of Control*, Wash. Post, Oct. 22, 2016, https://www.washingtonpost.com/investigations/the-dea-slowed-enforcement-while-the-opioid-epidemic-grew-out-of-control/2016/10/22/aea2bf8e-7f71-11e6-8d13-d7c704ef9fd9_story.html; Lenny Bernstein & Scott Higham, *Investigation: U.S. Senator Calls for Investigation of DEA Enforcement Slowdown Amid Opioid Crisis*, Wash. Post, Mar. 6, 2017, https://www.washingtonpost.com/investigations/us-senator-calls-for-investigation-of-dea-enforcement-slowdown/2017/03/06/5846ee60-028b-11e7-b1e9-a05d3c21f7cf_story.html; Eric Eyre, *DEA Agent: “We Had no Leadership” in WV Amid Flood of Pain Pills*, Charleston Gazette-Mail, Feb. 18, 2017, <http://www.wvgazettemail.com/news/20170218/dea-agent-we-had-no-leadership-in-wv-amid-flood-of-pain-pills->.

1 opioids.⁴⁸⁹ On information and belief, the “know your customer” questionnaires
 2 informed the RICO Diversion Defendants of the number of pills that the
 3 pharmacies sold, how many non-controlled substances are sold compared to
 4 controlled substances, whether the pharmacy buys from other distributors, the
 5 types of medical providers in the area, including pain clinics, general practitioners,
 6 hospice facilities, cancer treatment facilities, among others, and these
 7 questionnaires put the recipients on notice of suspicious orders.

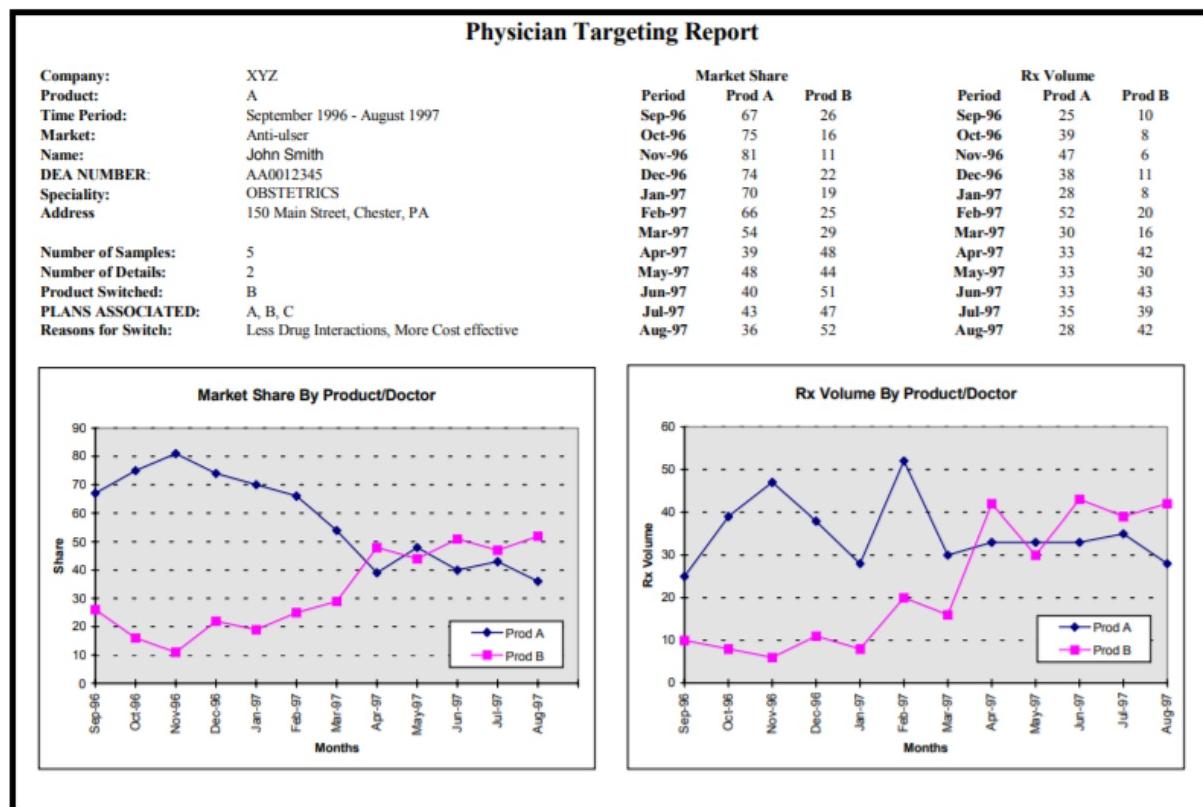
8 708. The RICO Diversion Defendants purchased nationwide, regional,
 9 state, and local prescriber- and patient-level data from the Data Vendors that
 10 allowed them to track prescribing trends, identify suspicious orders, identify
 11 patients who were doctor shopping, identify pill mills, etc. The Data Vendors’
 12 information purchased by the RICO Diversion Defendants allowed them to view,
 13 analyze, compute, and track their competitors sales, and to compare and analyze
 14 market share information.⁴⁹⁰

15 709. IMS, for example, IMS provided the RICO Diversion Defendants
 16 with reports detailing prescriber behavior and the number of prescriptions written
 17 between competing products.⁴⁹¹
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21 ⁴⁸⁹ Suggested Questions a Distributor should ask prior to shipping controlled
 22 substances, Drug Enforcement Administration (available at
https://www.deadiversion.usdoj.gov/mtgs/pharm_industry/14th_pharm/levin1 ques.pdf); Richard Widup, Jr., Kathleen H. Dooley, Esq. Pharmaceutical Production
Diversion: Beyond the PDMA, Purdue Pharma and McGuireWoods LLC,
 23 (available at [https://www.mcguirewoods.com/news-](https://www.mcguirewoods.com/news-resources/publications/lifesciences/product_diversion_beyond_pdma.pdf)
 24 [resources/publications/lifesciences/product_diversion_beyond_pdma.pdf](https://www.mcguirewoods.com/news-resources/publications/lifesciences/product_diversion_beyond_pdma.pdf)).

25 ⁴⁹⁰ A Verispan representative testified that the RICO Defendants use the
 26 prescribing information to “drive market share.” *Sorrell v. IMS Health Inc.*, 2011
 27 WL 661712, *9-10 (Feb. 22, 2011).

28 ⁴⁹¹ Paul Kallukaran & Jerry Kagan, *Data Mining at IMS HEALTH: How we Turned*
a Mountain of Data into a Few Information-rich Molehills, (accessed on February
 15, 2018),
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.198.349&rep=rep1&type=pdf>, Figure 2 at p.3.

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Figure 2:

710. Similarly, Wolters Kluwer, an entity that eventually owned data mining companies that were created by McKesson (Source) and Cardinal Health (ArcLight), provided the RICO Defendants with charts analyzing the weekly prescribing patterns of multiple physicians, organized by territory, regarding competing drugs, and analyzed the market share of those drugs.⁴⁹²

⁴⁹² *Sorrell v. IMS Health Inc.*, 2011 WL 705207, *467-471 (Feb. 22, 2011).

1. The Prescriber Roster shows Prescriber demographics, prescribing information and indicator arrows

Territory : 1102		Weekly Prescriber TR					
Prescriber	Trend	Specialty	Product	WEEK Feb-03-06	WEEK Jan-27-06	WEEK Jan-20-06	WEEK Jan-13-06
Territory : 1102 – TOTAL			PRODUCT A	46	64	58	88
			PRODUCT B	292	253	247	278
			PRODUCT C	55	56	56	58
			PRODUCT D	36	28	34	33
			PRODUCT E	7	9	2	9
			PRODUCT F	1	3	5	0
Doctor A		IM	PRODUCT A	4	1	1	1
			PRODUCT B	2	2	2	3
			PRODUCT C	0	2	0	0
			PRODUCT D	0	0	0	0
			PRODUCT E	0	0	0	0
			PRODUCT F	0	0	0	0
Doctor B		GE	PRODUCT A	3	1	1	2
			PRODUCT B	5	4	7	2
			PRODUCT C	0	1	0	0
			PRODUCT D	0	0	0	0
			PRODUCT E	0	1	0	1
			PRODUCT F	0	0	0	0
Doctor C		GE	PRODUCT A	3	1	2	0
			PRODUCT B	4	5	0	3
			PRODUCT C	0	1	1	0
			PRODUCT D	0	1	0	2
			PRODUCT E	0	0	0	0
			PRODUCT F	0	0	0	0

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3. Territory Summary Report shows Prescriber Roster information aggregated at a territory level

Territory Summary

Name	Spec	Zip	Product A NRX	Product A MM Share	Product A Rank	Market NRX	Market Rank
ABNEY, RAY C.	P	05302	6	10.7%	43	56	38
ALLISTER, ROBERT	P	03820	6	18.8%	43	32	63
ALTMAN, LEE S.	P	01655	34	14.0%	3	247	3
BALLARD, HARLOW	P	05801	0	0.0%	93	8	96
BARNEY, CHRISTINE A.	P	03766	6	26.1%	43	23	85
BARTON, GAIL	P	03755	13	32.5%	18	40	50
BERNSTEIN, RICHARD A.	P	05401	0	0.0%	93	14	94
BOHNERI, MICHAEL	P	03060	3	4.5%	73	66	29
BOSTIC, JEFFERY O.	CHP	03079	5	10.9%	55	45	44
BREITHOLTZ, TIMOTHY	P	03870	13	34.2%	18	38	52
BROWN, KENNETH	P	03941	4	10.0%	61	40	50
BUCHANAN, KEVIN	P	05701	5	16.1%	55	31	70
CARMAN, MEGAN W.	P	03246	10	12.3%	28	81	18
CARSEN, MARJORIA	P	05701	6	18.2%	43	33	59
CATPANO-FRIEDMAN, LISA	P	05201	5	8.6%	43	70	25
CLARKE-RUBIN, LORNA	P	12901	8	24.2%	32	33	59
COHEN, DEVRA H.	CHP	03060	3	6.5%	73	46	44
COLE, STEPHEN A.	P	05101	5	13.2%	55	38	52
COTTON, PAUL G.	P	05401	13	28.3%	18	46	44
CUSI, PRISCILLA M.	P	03104	17	7.9%	14	215	5
DAVISON, MARTHA F.	P	03110	14	11.3%	16	124	8
DEJONG, JACOB	P	03067	0	0.0%	93	21	87
DELFAUSSE, PETER O.	P	03301	6	35.3%	43	17	90
DENNETT, DOUGLAS E.	CHP	05401	0	0.0%	93	33	59
DEPPE, SUSAN L.	P	05401	1	0.3%	87	300	2
DEVENDERRAO, T.	P	03060	7	9.6%	37	73	21

711. This information allowed the RICO Diversion Defendants to track and identify instances of, overprescribing.⁴⁹³ In fact, one of the Data Venders' experts testified that a manufacturer of "narcotic analgesics" used the Data Venders' information to track, identify, report and halt suspicious orders of controlled substances.⁴⁹⁴

⁴⁹³ See *Sorrell v. IMS Health Inc.*, 2011 WL 1449043, *37-38 (March 24, 2011) (arguing that data had been used to “identify overuse of antibiotics in children,” and “whether there is a wide use of anthrax prophylactic medicines after the scares happened in 2001.”). The Data Vender Respondents also cited evidence from the trial court proving that “because analysis of PI data makes it possible to ‘identify overuse of a pharmaceutical in specific conditions, the government employs the data to monitor usage of controlled substances.’” *Id.*

⁴⁹⁴ *Id.* at *38. Eugene "Mick" Kolassa testified as an expert on behalf of the Data Vender stating that "a firm that sells narcotic analgesics was able to use prescriber-identifiable information to identify physicians that seemed to be prescribing an

1 [455] Q. Besides marketing and promotion, are
2 there any other uses for prescriber-identifiable data?

3 A. There's a number of other uses.

4 Q. And what are those?

5 A. The one that I was most impressed with
6 was a firm that used it to identify - a firm that
7 sells narcotic analgesics was able to use prescriber-
8 identifiable information to identify physicians that
9 seemed to be prescribing an inordinately high num-
10 ber of prescriptions for their product and they would
11 use that to notify the DEA and other authorities of
12 potential problems.

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14 712. The RICO Diversion Defendants were, therefore, collectively aware
15 of the suspicious orders that flowed daily from their manufacturing and
16 distribution facilities.

17 713. The RICO Diversion Defendants refused to identify, investigate and
18 report suspicious orders to the DEA when they became aware of the same despite
19 their actual knowledge of drug diversion rings. The RICO Diversion Defendants
20 refused to identify suspicious orders and diverted drugs despite the DEA issuing
21 final decisions against the Distributor Defendants in 178 registrant actions
22 between 2008 and 2012⁴⁹⁵ and 117 recommended decision in registrant actions
23 from The Office of Administrative Law Judges. These numbers include seventy-
24 six (76) actions involving orders to show cause and forty-one (41) actions

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26 inordinately high number of prescriptions for their product." *Id*; *see also* Joint
27 Appendix in *Sorrell v. IMS Health*, 2011 WL 687134, at *204 (Feb. 22, 2011).

28 ⁴⁹⁵ Evaluation and Inspections Div., Office of the Inspector Gen., U.S. Dep't of
Justice, *The Drug Enforcement Administration's Adjudication of Registrant Actions* 6 (2014), <https://oig.justice.gov/reports/2014/e1403.pdf>.

1 involving immediate suspension orders – all for failure to report suspicious
2 orders.⁴⁹⁶

3 714. Defendants' scheme had a decision-making structure driven by the
4 Manufacturer Defendants and corroborated by the Distributor Defendants. The
5 Manufacturer Defendants worked together to control the State and Federal
6 Government's response to the manufacture and distribution of prescription opioids
7 by increasing production quotas through a systematic refusal to maintain effective
8 controls against diversion, and identify suspicious orders and report them to the
9 DEA.

10 715. The RICO Diversion Defendants worked together to control the flow
11 of information and influence state and federal governments and political
12 candidates to pass legislation that was pro-opioid. The Manufacturer and
13 Distributor Defendants did this through their participation in the PCF and HDA.

14 716. The RICO Diversion Defendants also worked together to ensure that
15 the Aggregate Production Quotas, Individual Quotas and Procurement Quotas
16 allowed by the DEA remained artificially high and ensured that suspicious orders
17 were not reported to the DEA in order to ensure that the DEA had no basis for
18 refusing to increase or decrease production quotas due to diversion. The RICO
19 Diversion Defendants influenced the DEA production quotas in the following
20 ways:

21 717. The scheme devised and implemented by the RICO Diversion
22 Defendants amounted to a common course of conduct characterized by a refusal to
23 maintain effective controls against diversion, and all designed and operated to
24 ensure the continued unlawful sale of controlled substances.

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⁴⁹⁶ Id.

1 **C. PATTERN OF RACKETEERING ACTIVITY.**

2 718. The RICO Diversion Defendants conducted and participated in the
3 conduct of the Opioid Diversion Enterprise through a pattern of racketeering
4 activity as defined in 18 U.S.C. § 1961(1)(D), including ; the felonious
5 manufacture, importation, receiving, concealment buying selling, or otherwise
6 dealing in a controlled substance or listed chemical (as defined in section 102 of
7 the Controlled Substance Act), punishable under any law of the United States; and
8 18 U.S.C. 1961(1)(B), including mail fraud (18 U.S.C. § 1341) and wire fraud (18
9 U.S.C. § 1343).

10 **1. The RICO Defendants Manufactured, Sold and/or Dealt
11 in Controlled Substances and Their Actions Constitute
12 Crimes Punishable as Felonies.**

13 719. The RICO Diversion Defendants conducted and participated in the
14 conduct of the affairs of the Opioid Diversion Enterprise through a pattern of
15 racketeering activity as defined in 18 U.S.C. § 1961(1)(D) by the felonious
16 manufacture, importation, receiving, concealment, buying, selling, or otherwise
17 dealing in a controlled substance or listed chemical (as defined in section 102 of
18 the Controlled Substance Act), punishable under any law of the United States.

19 720. The RICO Diversion Defendants committed crimes that are
20 punishable as felonies under the laws of the United States. Specifically, 21 U.S.C.
21 § 843(a)(4) makes it unlawful for any person to knowingly or intentionally furnish
22 false or fraudulent information in, or omit any material information from, any
23 application, report, record or other document required to be made, kept or filed
24 under this subchapter. A violation of section 843(a)(4) is punishable by up to four
25 years in jail, making it a felony. 21 U.S.C. § 843(d)(1).

26 721. Each of the RICO Diversion Defendants qualifies as a registrant
27 under the CSA. Their status as registrants under the CSA requires that they
28 maintain effective controls against diversion of controlled substances in schedule I

1 or II, design and operate a system to disclose to the registrant suspicious orders of
2 controlled substances and inform the DEA of suspicious orders when discovered
3 by the registrant. 21 U.S.C. § 823; 21 C.F.R. § 1301.74(b).

4 722. The CSA and the Code of Federal Regulations, require the RICO
5 Diversion Defendants to make reports to the DEA of any suspicious orders
6 identified through the design and operation of their system to disclose suspicious
7 orders. The failure to make reports as required by the CSA and Code of Federal
8 Regulations amounts to a criminal violation of the statute.

9 723. The RICO Diversion Defendants knowingly and intentionally
10 furnished false or fraudulent information in their reports to the DEA about
11 suspicious orders, and/or omitted material information from reports, records and
12 other document required to be filed with the DEA including the Manufacturer
13 Defendants' applications for production quotas. Specifically, the RICO Diversion
14 Defendants were aware of suspicious orders of prescription opioids and the
15 diversion of their prescription opioids into the illicit market, and failed to report
16 this information to the DEA in their mandatory reports and their applications for
17 production quotas.

18 724. Upon information and belief, the foregoing examples reflect the
19 RICO Diversion Defendants' pattern and practice of willfully and intentionally
20 omitting information from their mandatory reports to the DEA as required by 21
21 C.F.R. § 1301.74. The sheer volume of enforcement actions available in the
22 public record against the Distributor Defendants supports this conclusion.⁴⁹⁷ For
23 example:

24 725. On April 24, 2007, the DEA issued an *Order to Show Cause and*
25 *Immediate Suspension Order* against the AmerisourceBergen Orlando, Florida

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⁴⁹⁷ Evaluation and Inspections Div., Office of the Inspector Gen., U.S. Dep't of
28 Justice, *The Drug Enforcement Administration's Adjudication of Registrant Actions* 6 (2014), <https://oig.justice.gov/reports/2014/e1403.pdf>.

1 distribution center (“Orlando Facility”) alleging failure to maintain effective
2 controls against diversion of controlled substances. On June 22, 2007,
3 AmerisourceBergen entered into a settlement that resulted in the suspension of its
4 DEA registration.

5 726. On November 28, 2007, the DEA issued an *Order to Show Cause*
6 and *Immediate Suspension Order* against the Cardinal Health Auburn,
7 Washington Distribution Center (“Auburn Facility”) for failure to maintain
8 effective controls against diversion of hydrocodone.

9 727. On December 5, 2007, the DEA issued an *Order to Show Cause and*
10 *Immediate Suspension Order* against the Cardinal Health Lakeland, Florida
11 Distribution Center (“Lakeland Facility”) for failure to maintain effective controls
12 against diversion of hydrocodone.

13 728. On December 7, 2007, the DEA issued an *Order to Show Cause and*
14 *Immediate Suspension Order* against the Cardinal Health Swedesboro, New Jersey
15 Distribution Center (“Swedesboro Facility”) for failure to maintain effective controls
16 against diversion of hydrocodone.

17 729. On January 30, 2008, the DEA issued an *Order to Show Cause and*
18 *Immediate Suspension Order* against the Cardinal Health Stafford, Texas
19 Distribution Center (“Stafford Facility”) for failure to maintain effective controls
20 against diversion of hydrocodone.

21 730. On May 2, 2008, McKesson Corporation entered into an
22 *Administrative Memorandum of Agreement* (“2008 MOA”) with the DEA which
23 provided that McKesson would “maintain a compliance program designed to
24 detect and prevent the diversion of controlled substances, inform DEA of
25 suspicious orders required by 21 C.F.R. § 1301.74(b), and follow the procedures
26 established by its Controlled Substance Monitoring Program.”

27 731. On September 30, 2008, Cardinal Health entered into a *Settlement*
28 and *Release Agreement and Administrative Memorandum of Agreement* with the

1 DEA related to its Auburn Facility, Lakeland Facility, Swedesboro Facility and
2 Stafford Facility. The document also referenced allegations by the DEA that
3 Cardinal failed to maintain effective controls against the diversion of controlled
4 substances at its distribution facilities located in McDonough, Georgia
5 (“McDonough Facility”), Valencia, California (“Valencia Facility”) and Denver,
6 Colorado (“Denver Facility”).

7 732. On February 2, 2012, the DEA issued an *Order to Show Cause and*
8 *Immediate Suspension Order* against the Cardinal Health Lakeland, Florida
9 Distribution Center (“Lakeland Facility”) for failure to maintain effective controls
10 against diversion of oxycodone.

11 733. On May, 14, 2012, Cardinal Health entered into an Administrative
12 Memorandum of Agreement with the DEA in which, among other things,
13 Cardinal Health “admits that its due diligence efforts for some pharmacy
14 customers and its compliance with the 2008 MOA, in certain respects, were
15 inadequate.”

16 734. Thereafter, on December 23, 2016, Cardinal Health agreed to pay a
17 \$44 million fine to the DEA to resolve the civil penalty portion of the
18 administrative action taken against its Lakeland, Florida Distribution Center.

19 735. On January 5, 2017, McKesson Corporation entered into an
20 *Administrative Memorandum Agreement* with the DEA wherein it agreed to pay a
21 \$150,000,000 civil penalty for violation of the 2008 MOA as well as failure to
22 identify and report suspicious orders at its facilities in Aurora CO, Aurora IL,
23 Delran NJ, LaCrosse WI, Lakeland FL, Landover MD, La Vista NE, Livonia MI,
24 Methuen MA, Santa Fe Springs CA, Washington Courthouse OH and West
25 Sacramento CA.

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1 736. In its Administrative Memorandum Agreement, McKesson
2 acknowledged its wrongdoing and failure to comply with the obligations imposed
3 by the CSA:

4 2. Acceptance of Responsibility. On or about September 27, 2006, February 7, 2007 and
5 December 27, 2007, DEA's Deputy Assistant Administrator, Office of Diversion Control, sent
6 letters to every entity in the United States that was registered with DEA to manufacture or
7 distribute controlled substances, including McKesson (the "DEA Letters"). The DEA Letters
8 contained, among other things, guidance for the identification and reporting of suspicious orders
9 to DEA, as required by 21 C.F.R. § 1301.74(b). McKesson acknowledges that, at various times
10 during the period from January 1, 2009 up through and including the Effective Date of this
11 Agreement (the "Covered Time Period"), it did not identify or report to DEA certain orders
12 placed by certain pharmacies which should have been detected by McKesson as suspicious based
13 on the guidance contained in the DEA Letters about the requirements set forth in 21 C.F.R. §
14 1301.74(b) and 21 U.S.C. § 842(a)(5). McKesson has taken steps to prevent such conduct from
15 occurring in the future, including the measures delineated in the Compliance Addendum.

16 On or about May 2, 2008, DEA and McKesson entered into an Administrative
17 Memorandum of Agreement (the "2008 MOA"). The 2008 MOA provided among other things,
18 that McKesson maintain a compliance program designed to detect and prevent the diversion of
19 controlled substances, inform DEA of suspicious orders as required by 21 C.F.R. § 1301.74(b),
20 and follow procedures established by its Controlled Substance Monitoring Program ("CSMP").
21 McKesson acknowledges that, at various times during the Covered Time Period, it did not
22 identify or report to DEA certain orders placed by certain pharmacies, which should have been
23 detected by McKesson as suspicious, in a manner fully consistent with the requirements set forth
24 in the 2008 MOA. McKesson has taken steps to prevent such conduct from occurring in the
25 future, including the measures delineated in the Compliance Addendum.

26 737. On April 23, 2015, McKesson filed a Form-8-K announcing a
27 settlement with the DEA and DOJ wherein it admitted to violating the CSA and
28 agreed to pay \$150 million and have some of its DEA registrations suspended on a
29 staggered basis.

30 738. In 2016, the Los Angeles Times reported that Purdue was aware of a
31 pill mill operating out of Los Angeles yet failed to alert the DEA. The LA Times
32 uncovered that Purdue began tracking a surge in prescriptions in Los Angeles,
33 including one prescriber in particular. Documents published by the L.A. Times
34 reveal that a Purdue sales manager spoke with company officials, asking:

35 739. Purdue was clearly aware of diversion. As a registrant, Purdue has
36 the same obligation to report suspicious orders as a wholesale distributor.
37 Although Purdue claimed that it was considering making a report to the DEA, it

1 shirked its responsibility, claimed that it was the wholesaler's responsibility and
2 then reserved the right to make the report:

3 740. Despite its knowledge of obvious diversion, "Purdue did not shut off
4 the supply of highly addictive OxyContin and did not tell authorities what it knew
5 about [a pill mill] until several years later when the clinic was out of business and
6 its leaders indicted. By that time, 1.1 million pills had spilled into the hands of
7 Armenian mobsters, the Crips gang and other criminals."

8 741. Finally, Mallinckrodt was recently the subject of a DEA and Senate
9 investigation for its opioid practices. Specifically, in 2011, the DEA targeted
10 Mallinckrodt arguing that it ignored its responsibility to report suspicious orders
11 as 500 million of its pills ended up in Florida between 2008 and 2012. After six
12 years of DEA investigation, Mallinckrodt agreed to a settlement involving a \$35
13 million fine. Federal prosecutors summarized the case by saying that
14 Mallinckrodt's response was that everyone knew what was going on in Florida but
15 they had no duty to report it.

16 742. These actions against the Distributor Defendants confirm that the
17 Distributor Defendants knew they had a duty to maintain effective controls against
18 diversion, design and operate a system to disclose suspicious orders, and to report
19 suspicious orders to the DEA. These actions also demonstrate, on information and
20 belief, that the Manufacturer Defendants were aware of the enforcement against
21 their Distributors and the diversion of the prescription opioids and a
22 corresponding duty to report suspicious orders.

23 743. The pattern of racketeering activity alleged herein is continuing as of
24 the date of this Complaint and, upon information and belief, will continue into the
25 future unless enjoined by this Court.

26 744. Many of the precise dates of the RICO Diversion Defendants'
27 criminal actions at issue herein were hidden and cannot be alleged without access
28 to their books and records. Indeed, an essential part of the successful operation of

1 the Opioid Diversion Enterprise depended upon the secrecy of the participants in
2 that enterprise.

3 745. Each instance of racketeering activity alleged herein was related, had
4 similar purposes, involved the same or similar participants and methods of
5 commission, and had similar results affecting similar victims, Plaintiffs'
6 Community and the County. Defendants calculated and intentionally crafted the
7 diversion scheme to increase and maintain profits from unlawful sales of opioids,
8 without regard to the effect such behavior would have on this jurisdiction, its
9 citizens or the County. The Defendants were aware that the County and the
10 citizens of this jurisdiction rely on the Defendants to maintain a closed system of
11 manufacturing and distribution to protect against the non-medical diversion and
12 use of their dangerously addictive opioid drugs.

13 746. By intentionally refusing to report and halt suspicious orders of their
14 prescription opioids, Defendants engaged in a fraudulent scheme and unlawful
15 course of conduct constituting a pattern of racketeering activity.

16 747. The RICO Diversion Defendants' predicate acts and pattern of
17 racketeering activity were a substantial and foreseeable cause of the County's
18 injury and the relationship between the RICO Diversion Defendants' conduct and
19 the County's injury are logical and not speculative. It was foreseeable to the
20 RICO Diversion Defendants that when they refused to identify, report and halt
21 suspicious orders as required by the CSA and Code of Federal Regulations, it
22 would allow the wide-spread diversion of prescriptions opioids into the illicit
23 market and create an opioid-addiction epidemic that logically, substantially, and
24 foreseeably harmed the County.

25 748. The RICO Diversion Defendants' predicate acts and pattern of
26 racketeering activity were a substantial and foreseeable cause of the County's
27 injury and the relationship between the RICO Diversion Defendants' conduct and
28 the County's injury is logical and not speculative. It was foreseeable to the RICO

1 Diversion Defendants that when they fraudulently marketed highly-addictive and
2 dangerous drugs, that were approved for very limited and specific uses by the
3 FDA, as non-addictive and safe for off-label uses such as moderate pain, non-
4 cancer pain, and long-term chronic pain, that the RICO Diversion Defendants
5 would create an opioid-addiction epidemic that logically, substantially and
6 foreseeably harmed the County.

7 749. The last racketeering incident occurred within five years of the
8 commission of a prior incident of racketeering.

11 750. The RICO Diversion Defendants carried out, or attempted to carry
12 out, a scheme to defraud federal and state regulators, and the American public by
13 knowingly conducting or participating in the conduct of the Opioid Diversion
14 Enterprise through a pattern of racketeering activity within the meaning of 18
15 U.S.C. § 1961(1) that employed the use of mail and wire facilities, in violation of
16 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

17 751. The RICO Diversion Defendants committed, conspired to commit,
18 and/or aided and abetted in the commission of at least two predicate acts of
19 racketeering activity (*i.e.* violations of 18 U.S.C. §§ 1341 and 1343) within the
20 past ten years. The multiple acts of racketeering activity that the RICO Diversion
21 Defendants committed, or aided and abetted in the commission of, were related to
22 each other, posed a threat of continued racketeering activity, and therefore
23 constitute a “pattern of racketeering activity.” The racketeering activity was made
24 possible by the RICO Diversion Defendants’ regular use of the facilities, services,
25 distribution channels, and employees of the Opioid Diversion Enterprise. The
26 RICO Diversion Defendants participated in the scheme to defraud by using mail,
27 telephone and the Internet to transmit mailings and wires in interstate or foreign
28 commerce.

1 752. The RICO Diversion Defendants used, directed the use of, and/or
2 caused to be used, thousands of interstate mail and wire communications in
3 service of their scheme through virtually uniform misrepresentations,
4 concealments and material omissions regarding their compliance with their
5 mandatory reporting requirements and the actions necessary to carry out their
6 unlawful goal of selling prescription opioids without reporting suspicious orders
7 or the diversion of opioids into the illicit market.

8 753. In devising and executing the illegal scheme, the RICO Diversion
9 Defendants devised and knowingly carried out a material scheme and/or artifice to
10 defraud by means of materially false or fraudulent pretenses, representations,
11 promises, or omissions of material facts. For the purpose of executing the illegal
12 scheme, the RICO Diversion Defendants committed these racketeering acts,
13 which number in the thousands, intentionally and knowingly with the specific
14 intent to advance the illegal scheme.

15 754. The RICO Diversion Defendants' predicate acts of racketeering (18
16 U.S.C. § 1961(1)) include, but are not limited to:

- 17 a. Mail Fraud: The RICO Defendants violated 18 U.S.C. § 1341 by
18 sending or receiving, or by causing to be sent and/or received, materials
19 via U.S. mail or commercial interstate carriers for the purpose of
20 executing the unlawful scheme to design, manufacture, market, and sell
21 the prescription opioids by means of false pretenses, misrepresentations,
22 promises, and omissions.
- 23 b. Wire Fraud: The RICO Defendants violated 18 U.S.C. § 1343 by
24 transmitting and/or receiving, or by causing to be transmitted and/or
25 received, materials by wire for the purpose of executing the unlawful
26 scheme to design, manufacture, market, and sell the prescription opioids
27 by means of false pretenses, misrepresentations, promises, and
28 omissions.

1 755. The RICO Diversion Defendants' use of the mail and wires includes,
2 but is not limited to, the transmission, delivery, or shipment of the following by
3 the Manufacturers, Distributors, or third parties that were foreseeably caused to be
4 sent as a result of the RICO Diversion Defendants' illegal scheme, including but
5 not limited to:

6 a. The prescription opioids themselves;
7 b. Documents and communications that supported and/or facilitated the
8 Defendants' request for higher aggregate production quotas, individual
9 production quotas, and procurement quotas;
10 c. Documents and communications that facilitated the manufacture,
11 purchase and sale of prescription opioids;
12 d. Defendants' DEA registrations;
13 e. Documents and communications that supported and/or facilitated
14 Defendants' DEA registrations;
15 f. Defendants' records and reports that were required to be submitted to the
16 DEA pursuant to 21 U.S.C. § 827;
17 g. Documents and communications related to the Defendants' mandatory
18 DEA reports pursuant to 21 U.S.C. § 823 and 21 C.F.R. § 1301.74;
19 h. Documents intended to facilitate the manufacture and distribution of
20 Defendants' prescription opioids, including bills of lading, invoices,
21 shipping records, reports and correspondence;
22 i. Documents for processing and receiving payment for prescription
23 opioids;
24 j. Payments from the Distributors to the Manufacturers;
25 k. Rebates and chargebacks from the Manufacturers to the Distributors;
26 l. Payments to Defendants' lobbyists through the PCF;
27 m. Payments to Defendants' trade organizations, like the HDA, for
28 memberships and/or sponsorships;

- 1 n. Deposits of proceeds from Defendants' manufacture and distribution of
 2 prescription opioids; and
 3 o. Other documents and things, including electronic communications.

4 756. On information and belief, the RICO Diversion Defendants (and/or
 5 their agents), for the purpose of executing the illegal scheme, sent and/or received
 6 (or caused to be sent and/or received) by mail or by private or interstate carrier,
 7 shipments of prescription opioids and related documents by mail or by private
 8 carrier affecting interstate commerce, including the following:

Defendant Group Name	Company Names	Drugs		
		Drug Name	Chemical Name	CSA Schedule
Purdue	(1) Purdue Pharma, LP, (2) Purdue Pharma, Inc., (3) The Purdue Frederick Company	OxyContin	Oxycodone hydrochloride extended release	Schedule II
		MS Contin	Morphine sulfate extended release	Schedule II
		Dilaudid	Hydromorphone hydrochloride	Schedule II
		Dilaudid-HP	Hydromorphone hydrochloride	Schedule II
		Butrans	Buprenorphine	Schedule II
		Hysinga ER	Hydrocodone bitrate	Schedule II
		Targiniq ER	Oxycodone hydrochloride	Schedule II
Cephalon	(1) Cephalon, Inc., (2) Teva Pharmaceutical Industries, Ltd., (3) Teva Pharmaceuticals USA, Inc.	Actiq	Fentanyl citrate	Schedule II
		Fentora	Fentanyl citrate	Schedule II
		Generic oxycontin	Oxycodone hydrochloride	Schedule II
Endo	(1) Endo Health Solutions, Inc., (2) Endo Pharmaceuticals Inc., (3) Qualitest Pharmaceuticals, Inc. (wholly-owned subsidiary of Endo)	Opana ER	Oxymorphone hydrochloride extended release	Schedule II
		Opana	Oxymorphone hydrochloride	Schedule II
		Percodan	Oxymorphone hydrochloride and aspirin	Schedule II
		Percocet	Oxymorphone hydrochloride and acetaminophen	Schedule II
		Generic oxycodone		Schedule II

1 Defendant Group Name	2 Company Names	3 Drugs		
		4 Drug Name	5 Chemical Name	6 CSA Schedule
		7 Generic oxymorphone		8 Schedule II
		9 Generic hydromorphone		10 Schedule II
		11 Generic hydrocodone		12 Schedule II
13 Mallinckrodt	(1) Mallinckrodt PLC, (2) Mallinckrodt LLC (wholly-owned subsidiary of Mallinckrodt PLC)	14 Exalgo	15 Hydromorphone hydrochloride	16 Schedule II
		17 Roxicodone	18 Oxycodone hydrochloride	19 Schedule II
20 Allergan	(1) Allergan Plc, (2) Actavis LLC, (3) Actavis Pharma, Inc., (4) Actavis Plc, (5) Actavis, Inc., (6) Watson Pharmaceuticals, Inc., (7) Watson Pharma, Inc.	21 Kadian	22 Morphine Sulfate	23 Schedule II
		24 Norco (Generic of Kadian)	25 Hydrocodone and acetaminophen	26 Schedule II
		27 Generic Duragesic	28 Fentanyl	29 Schedule II
		30 Generic Opana	31 Oxymorphone hydrochloride	32 Schedule II

14
15 757. Each of the RICO Diversion Defendants identified manufactured,
16 shipped, paid for and received payment for the drugs identified above, throughout
17 the United States.

18 758. The RICO Diversion Defendants also used the internet and other
19 electronic facilities to carry out their scheme and conceal the ongoing fraudulent
20 activities. Specifically, the RICO Diversion Defendants made misrepresentations
21 about their compliance with Federal and State laws requiring them to identify,
22 investigate and report suspicious orders of prescription opioids and/or diversion of
23 the same into the illicit market.

24 759. At the same time, the RICO Diversion Defendants misrepresented the
25 superior safety features of their order monitoring programs, ability to detect
26 suspicious orders, commitment to preventing diversion of prescription opioids,
27 and their compliance with all state and federal regulations regarding the
28 identification and reporting of suspicious orders of prescription opioids.

1 760. Upon information and belief, the RICO Diversion Defendants
2 utilized the internet and other electronic resources to exchange communications,
3 to exchange information regarding prescription opioid sales, and to transmit
4 payments and rebates/chargebacks.

5 761. The RICO Diversion Defendants also communicated by U.S. Mail,
6 by interstate facsimile, and by interstate electronic mail with each other and with
7 various other affiliates, regional offices, regulators, distributors, and other third-
8 party entities in furtherance of the scheme.

9 762. The mail and wire transmissions described herein were made in
10 furtherance of Defendants' scheme and common course of conduct to deceive
11 regulators, the public and The County that Defendants were complying with their
12 state and federal obligations to identify and report suspicious orders of
13 prescription opioids all while Defendants were knowingly allowing millions of
14 doses of prescription opioids to divert into the illicit drug market. The RICO
15 Diversion Defendants' scheme and common course of conduct was to increase or
16 maintain high production quotas for their prescription opioids from which they
17 could profit.

18 763. Many of the precise dates of the fraudulent uses of the U.S. mail and
19 interstate wire facilities have been deliberately hidden by Defendants and cannot
20 be alleged without access to Defendants' books and records. However, Plaintiffs
21 have described the types of, and in some instances, occasions on which the
22 predicate acts of mail and/or wire fraud occurred. They include thousands of
23 communications to perpetuate and maintain the scheme, including the things and
24 documents described in the preceding paragraphs.

25 764. The RICO Diversion Defendants did not undertake the practices
26 described herein in isolation, but as part of a common scheme. Various other
27 persons, firms, and corporations, including third-party entities and individuals not
28 named as defendants in this Complaint, may have contributed to and/or

1 participated in the scheme with the RICO Diversion Defendants in these offenses
2 and have performed acts in furtherance of the scheme to increase revenues,
3 increase market share, and /or minimize the losses for the RICO Diversion
4 Defendants.

5 765. The RICO Diversion Defendants aided and abetted others in the
6 violations of the above laws, thereby rendering them indictable as principals in the
7 18 U.S.C. §§ 1341 and 1343 offenses.

8 766. The RICO Diversion Defendants hid from the general public and
9 suppressed and/or ignored warnings from third parties, whistleblowers and
10 governmental entities about the reality of the suspicious orders that the RICO
11 Diversion Defendants were filling on a daily basis – leading to the diversion of
12 hundreds of millions of doses of prescriptions opioids into the illicit market.

13 767. The RICO Diversion Defendants, with knowledge and intent, agreed
14 to the overall objective of their fraudulent scheme and participated in the common
15 course of conduct to commit acts of fraud and indecency in manufacturing and
16 distributing prescription opioids.

17 768. Indeed, for the Defendants' fraudulent scheme to work, each of the
18 Defendants had to agree to implement similar tactics regarding manufacturing
19 prescription opioids and refusing to report suspicious orders.

20 769. As described herein, the RICO Diversion Defendants engaged in a
21 pattern of related and continuous predicate acts for years. The predicate acts
22 constituted a variety of unlawful activities, each conducted with the common
23 purpose of obtaining significant monies and revenues from the sale of their highly
24 addictive and dangerous drugs. The predicate acts also had the same or similar
25 results, participants, victims, and methods of commission. The predicate acts were
26 related and not isolated events.

27 770. The predicate acts all had the purpose of creating the opioid epidemic
28 that substantially injured the County's business and property, while

1 simultaneously generating billion-dollar revenue and profits for the RICO
2 Diversion Defendants. The predicate acts were committed or caused to be
3 committed by the RICO Diversion Defendants through their participation in the
4 Opioid Diversion Enterprise and in furtherance of its fraudulent scheme.

5 771. The pattern of racketeering activity alleged herein and the Opioid
6 Diversion Enterprise are separate and distinct from each other. Likewise,
7 Defendants are distinct from the enterprise.

8 772. The pattern of racketeering activity alleged herein is continuing as of
9 the date of this Complaint and, upon information and belief, will continue into the
10 future unless enjoined by this Court.

11 773. Many of the precise dates of the RICO Diversion Defendants'
12 criminal actions at issue here have been hidden by Defendants and cannot be
13 alleged without access to Defendants' books and records. Indeed, an essential part
14 of the successful operation of the Opioid Diversion Enterprise alleged herein
15 depended upon secrecy.

16 774. Each instance of racketeering activity alleged herein was related, had
17 similar purposes, involved the same or similar participants and methods of
18 commission, and had similar results affecting similar victims, including Plaintiffs'
19 Community and the County. Defendants calculated and intentionally crafted the
20 Opioid Diversion Enterprise and their scheme to increase and maintain their
21 increased profits, without regard to the effect such behavior would have on
22 Plaintiffs' Community, its citizens or the County. In designing and implementing
23 the scheme, at all times Defendants were cognizant of the fact that those in the
24 manufacturing and distribution chain rely on the integrity of the pharmaceutical
25 companies and ostensibly neutral third parties to provide objective and reliable
26 information regarding Defendants' products and their manufacture and
27 distribution of those products. The Defendants were also aware that The County
28 and the citizens of this jurisdiction rely on the Defendants to maintain a closed

1 system and to protect against the non-medical diversion and use of their
2 dangerously addictive opioid drugs.

3 775. By intentionally refusing to report and halt suspicious orders of their
4 prescription opioids, Defendants engaged in a fraudulent scheme and unlawful
5 course of conduct constituting a pattern of racketeering activity.

6 776. It was foreseeable to Defendants that The County would be harmed
7 when they refused to report and halt suspicious orders, because their violation of
8 the duties imposed by the CSA and Code of Federal Regulations allowed the
9 widespread diversion of prescription opioids out of appropriate medical channels
10 and into the illicit drug market – causing the opioid epidemic that the CSA
11 intended to prevent.

12 777. The last racketeering incident occurred within five years of the
13 commission of a prior incident of racketeering.

14 **D. DAMAGES.**

15 **1. Impact of the Opioid Diversion Enterprise.**

16 778. California has been especially ravaged by the national opioid crisis.

17 779. More people die each year from drug overdoses in California than in
18 any other state.⁴⁹⁸ The State's death rate has continued to climb, increasing by 30
19 percent from 1999 to 2015, according to the Center for Disease Control (CDC).⁴⁹⁹

20 780. In 2016, 1,925 Californians died due to prescription opioids.⁵⁰⁰ This
21 number is on par with other recent years: in 2015, 1,966 deaths in California were
22 due just to prescription opioids (not including heroin); in 2014 that number was

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⁴⁹⁸ Davis, *supra*.

28⁴⁹⁹ Karlamangla, *supra*.

⁵⁰⁰ Davis, *supra*.

1 even higher at 2,024 prescription opioid deaths; and in 2013, 1,934 Californians
 2 died from a prescription opioid overdose.⁵⁰¹

3 781. Of the 1,925 opioid-related deaths in California in 2016, fentanyl was
 4 a factor in at least 234 of them.⁵⁰² This is an increase of 47 percent for 2016.⁵⁰³
 5 Heroin-related deaths have risen by 67 percent in California since 2006.⁵⁰⁴

6 782. The high number of deaths is due in part to the extraordinary number
 7 of opioids prescribed in the State. Over 23.6 million prescriptions for opioids were
 8 written in California in just 2016.⁵⁰⁵

9 783. The California Department of Public Health tracks the number of
 10 reported hospitalizations and emergency department visits due to prescription
 11 opioids.⁵⁰⁶ In 2015, the last year for which information is currently available,
 12 California had 3,935 emergency department visits and 4,095 hospitalizations
 13 related to prescription opioid overdoses (excluding heroin).⁵⁰⁷ The numbers were
 14 even higher in 2014, when 4,106 people visited the emergency department and
 15 4,482 people were hospitalized due to prescription opioid abuse.⁵⁰⁸ In 2013, there
 16 were 3,964 emergency department visits and 4,344 hospitalizations for
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19 ⁵⁰¹California Department of Public Health, *California Opioid Overdose*
 20 *Surveillance Dashboard*, available at https://pdop.shinyapps.io/ODdash_v1/ (last
 21 visited March 2, 2018).

22 ⁵⁰² Davis, *supra*.

23 ⁵⁰³ Karlamangla, *supra*.

24 ⁵⁰⁴ California Department of Public Health, *State of California Strategies to*
 25 *Address Prescription Drug (Opioid) Misuse, Abuse, and Overdose Epidemic in*
 26 *California* at 3 (June 2016), available at
<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/CDPH%20Document%20Library/Prescription%20Drug%20Overdose%20Program/CAOpioidPreventionStrategies4.17.pdf> (last visited March 2, 2018).

27 ⁵⁰⁵ California Department of Public Health, *California Opioid Overdose*
 28 *Surveillance Dashboard*, *supra*.

29 ⁵⁰⁶ *Id.*

30 ⁵⁰⁷ *Id.*

31 ⁵⁰⁸ *Id.*

1 prescription opioid overdoses.⁵⁰⁹ When emergency visits and hospitalizations
 2 include heroin, the numbers are even higher.⁵¹⁰

3 784. NAS has increased dramatically in California, with the rate of infants
 4 born with NAS more than tripling from 2008 to 2013.⁵¹¹ While the number of
 5 affected newborns rose from 1,862 in 2008 to 3,007 in 2014, that number jumped
 6 by another 21 percent in 2015.⁵¹² This is despite a steady decline in the overall
 7 number of birth in California during that same time.⁵¹³

8 785. Reports from California's Office of Statewide Health Planning,
 9 which collects data from licensed health care facilities, have shown a 95 percent
 10 increase between 2008 and 2015 of newborns affected by drugs transmitted via
 11 placenta or breast milk.⁵¹⁴

12 786. The opioid epidemic has also had an impact on crime in California.
 13 Pharmacy robberies have gone up by 163 percent in California over the last two
 14 years, according to the DEA. The DEA recorded 90 incidents in 2015, 154 in
 15 2016 and, through mid-November of 2017, that number had climbed to 237.⁵¹⁵
 16 Most perpetrators were after prescription opioids.⁵¹⁶ In addition, fentanyl seizures
 17 at California ports increased 266 percent in fiscal year 2017.⁵¹⁷

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 19 ⁵⁰⁹ *Id.*
 20 ⁵¹⁰ *Id.*

21 ⁵¹¹ California Child Welfare Co-Investment Partnership, *supra* at 5.

22 ⁵¹² Clark, *supra*.

23 ⁵¹³ *Id.*

24 ⁵¹⁴ California Child Welfare Co-Investment Partnership, *supra*.

25 ⁵¹⁵ Ed Fletcher, "What's behind the spike in drug store robberies?" *The Sacramento Bee*, Dec. 8, 2017 (available at <http://www.sacbee.com/news/local/crime/article188636384.html> (last visited March 2, 2018)).

26 ⁵¹⁶ *Id.*

27 ⁵¹⁷ United States Department of Justice, The United States Attorney's Office,
 28 Southern District of California, *U.S. Attorney Appoints Opioid Coordinators* (Feb. 8, 2018) available at <https://www.justice.gov/usao-sdca/pr/us-attorney-appoints-opioid-coordinators> (last visited March 2, 2018).

1 787. The opioid epidemic is particularly devastating in Plaintiffs'
 2 Community.

3 788. In 2016, the County had an opioid overdose death rate of 9.8 per
 4 100,000 people.⁵¹⁸

5 789. From 2012 to 2014, the County suffered 69 deaths due to drug
 6 overdoses for a drug overdose mortality rate of 23 deaths per 100,000 residents.⁵¹⁹

7 790. Prescription opioids have also been responsible for a high rate of
 8 emergency department visits and hospitalizations in the County. In 2016, Nevada
 9 County had a rate of 17 emergency department visits due to opioid overdoses
 10 (excluding heroin) per 100,000 people, and 19 opioid overdose hospitalizations
 11 per 100,000 residents, which was the fourth highest rate in the State that year.⁵²⁰

12 791. The CDC has tracked prescription rates per county in the United
 13 States, identifying the geographic “hotspots” for rates of opioid prescriptions.⁵²¹
 14 The CDC has calculated the geographic distribution at county levels of opioid
 15 prescriptions dispensed per 100 persons,⁵²² revealing that Nevada County has
 16 been a consistent hotspot over at least the past decade.

17 792. The CDC’s statistics prove that the opioid prescription rates in
 18 Nevada County have exceeded any legitimate medical, scientific, or industrial
 19 purpose. The overall opioid prescribing rate in 2016 was 66.5 prescriptions per
 20

21 ⁵¹⁸ California Department of Public Health, *California Opioid Overdose*
 22 *Surveillance Dashboard*, available at https://pdop.shinyapps.io/ODdash_v1/ (last
 23 visited April 20, 2018) (Nevada County specific page).

24 ⁵¹⁹ County Health Rankings & Roadmaps, Drug overdose deaths, available at
<http://www.countyhealthrankings.org/app/california/2016/measure/factors/138/data> (last visited April 20, 2018).

25 ⁵²⁰ California Department of Public Health, *California Opioid Overdose*
Surveillance Dashboard, available at https://pdop.shinyapps.io/ODdash_v1/ (last
 26 visited April 20, 2018) (Nevada County specific page).

27 ⁵²¹ U.S. Prescribing Rate Maps, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 28 2017).

⁵²² *Id.*

1 100 people and 44.8 in California.⁵²³ However, in Nevada County, California, the
 2 2016 prescription rate was 83 per 100 people.⁵²⁴ This is down from the 2015
 3 prescribing rate for Nevada County which was 86 per 100 people.⁵²⁵

4 793. Unfortunately, the 2015 and 2016 high rates of opioid prescriptions
 5 were not an aberration for Nevada County. Consistently, the opioid prescribing
 6 rates in Nevada County have been significantly greater than the national and state
 7 averages, and often are more than one prescription per person living in the
 8 County. Compared to a national average of 75.6 opioid prescriptions per 100
 9 people in 2014⁵²⁶ and 52.7 in California,⁵²⁷ the Nevada County opioid prescription
 10 rate was 97.4 per 100 people.⁵²⁸ In 2013, the national average was 78.1 opioid
 11 prescriptions per 100 people,⁵²⁹ but the opioid prescription rate in Nevada County
 12 was 105.3 per 100 people – more than one prescription for every man, woman and
 13 child in Nevada County.⁵³⁰ Compared to a national average of 81.3 opioid

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 15 ⁵²³ *Id.* See also U.S. State Prescribing Rates, 2016, available at
 16 <https://www.cdc.gov/drugoverdose/maps/rxstate2016.html> (last visited April 18,
 17 2018).

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 19 ⁵²⁴ U.S. County Prescribing Rates, 2016, (reporting for “Nevada, CA” here and
 20 below) CDC available at
 21 <https://www.cdc.gov/drugoverdose/maps/rxcounty2016.html> (last visited April 18,
 22 2018).

23
 24 ⁵²⁵ U.S. County Prescribing Rates, 2015, CDC, available at
 25 <https://www.cdc.gov/drugoverdose/maps/rxcounty2015.html> (last visited April 18,
 26 2018).

27
 28 ⁵²⁶ U.S. Prescribing Rate Maps, CDC, available at
 29 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 30 2017).

⁵²⁷ U.S. State Prescribing Rates, 2014, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxstate2014.html> (last visited Dec. 11,
 31 2017).

⁵²⁸ U.S. County Prescribing Rates, 2014, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxcounty2014.html> (last visited April 18,
 32 2018).

⁵²⁹ U.S. Prescribing Rate Maps, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 33 2017).

⁵³⁰ U.S. County Prescribing Rates, 2013, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxcounty2013.html> (last visited April 18,
 34 2018).

1 prescriptions per 100 people in 2012,⁵³¹ the opioid prescription rate in Nevada
 2 County was 110 per 100 people that year.⁵³² In 2011, the national average was
 3 80.9 opioid prescriptions per 100 people,⁵³³ but the opioid prescription rate in
 4 Nevada County was 115.4 per 100 people.⁵³⁴ Compared to a national average of
 5 81.2 opioid prescriptions per 100 people in 2010,⁵³⁵ the Nevada County opioid
 6 prescription rate was 119.3 per 100 people – an all-time high for Nevada
 7 County.⁵³⁶ In 2009, the national average was 79.5 opioid prescriptions per 100
 8 people,⁵³⁷ but the rate in Nevada County was 111.8 per 100.⁵³⁸ Compared to a
 9 national average of 78.2 opioid prescriptions per 100 people in 2008⁵³⁹ and 55.1 in
 10 California,⁵⁴⁰ the Nevada County rate was 104.8 per 100 people.⁵⁴¹ In 2007, the
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12 ⁵³¹ U.S. Prescribing Rate Maps, CDC, available at
 13 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 14 2017).

15 ⁵³² U.S. County Prescribing Rates, 2012, CDC, available at
 16 <https://www.cdc.gov/drugoverdose/maps/rxcounty2012.html> (last visited April 18,
 17 2018).

18 ⁵³³ U.S. Prescribing Rate Maps, CDC, available at
 19 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 20 2017).

21 ⁵³⁴ U.S. County Prescribing Rates, 2011, CDC, available at
 22 <https://www.cdc.gov/drugoverdose/maps/rxcounty2011.html> (last visited April 18,
 23 2018).

24 ⁵³⁵ U.S. Prescribing Rate Maps, CDC, available at
 25 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 26 2017).

27 ⁵³⁶ U.S. County Prescribing Rates, 2010, CDC, available at
 28 <https://www.cdc.gov/drugoverdose/maps/rxcounty2010.html> (last visited April 18,
 29 2018).

⁵³⁷ U.S. Prescribing Rate Maps, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 2017).

⁵³⁸ U.S. County Prescribing Rates, 2009, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxcounty2009.html> (last visited April 18,
 2018).

⁵³⁹ U.S. Prescribing Rate Maps, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
 2017).

⁵⁴⁰ U.S. State Prescribing Rates, 2018, CDC, available at
<https://www.cdc.gov/drugoverdose/maps/rxstate2008.html> (last visited Dec. 11,
 2017).

1 national average was 75.9 opioid prescriptions per 100 people,⁵⁴² but the Nevada
2 County rate was 102.1 per 100 people.⁵⁴³ Compared to a national average of 72.4
3 opioid prescriptions per 100 people prescribed opioids in 2006,⁵⁴⁴ the Nevada
4 County rate was 101 per 100 people.⁵⁴⁵

5 **2. The Relief Sought.**

6 794. The RICO Diversion Defendants' violations of law and their pattern
7 of racketeering activity directly and proximately caused the County injury in its
8 business and property. The RICO Diversion Defendants' pattern of racketeering
9 activity, including their refusal to identify, report and halt suspicious orders of
10 controlled substances, logically, substantially and foreseeably cause an opioid
11 epidemic. The County was injured by the RICO Diversion Defendants' pattern of
12 racketeering activity and the opioid epidemic that they created.

13 795. As the County alleges, the RICO Diversion Defendants knew that the
14 opioids they manufactured and supplied were unsuited to treatment of long-term,
15 chronic, non-acute, and non-cancer pain, or for any other use not approved by the
16 FDA, and knew that opioids were highly addictive and subject to abuse.⁵⁴⁶
17 Nevertheless, the RICO Diversion Defendants engaged in a scheme of deception,

19 ⁵⁴¹ U.S. County Prescribing Rates, 2008, CDC, available at
20 <https://www.cdc.gov/drugoverdose/maps/rxcounty2008.html> (last visited April 18,
2018).

21 ⁵⁴² U.S. Prescribing Rate Maps, CDC, available at
22 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,,
2017).

23 ⁵⁴³ U.S. County Prescribing Rates, 2007, CDC, available at
24 <https://www.cdc.gov/drugoverdose/maps/rxcounty2007.html> (last visited April 18,
2018).

25 ⁵⁴⁴ U.S. Prescribing Rate Maps, CDC, available at
26 <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Oct. 30,
2017).

27 ⁵⁴⁵ U.S. County Prescribing Rates, 2006, CDC, available at
28 <https://www.cdc.gov/drugoverdose/maps/rxcounty2006.html> (last visited April 18,
2018).

29 ⁵⁴⁶ Traveler's Property Casualty Company of America v. Actavis, Inc., 22 Cal.
Rptr. 3d 5, 19 (Cal. Ct. App. 2017).

1 that utilized the mail and wires as part of their fraud, in order to increase sales of
 2 their opioid products by refusing to identify, report suspicious orders of
 3 prescription opioids that they knew were highly addictive, subject to abuse, and
 4 were actually being diverted into the illegal market.⁵⁴⁷

5 796. Here, as the County alleges, the link of causation generally breaks
 6 down into three very short steps: (1) the RICO Diversion Defendants' affirmative
 7 action to continue supplying prescription opioids through legal channels with
 8 knowledge that they were being diverted into the illicit market; (2) an opioid
 9 epidemic in the form of criminal drug trafficking, misuse and abuse; and (3)
 10 injuries to the County.⁵⁴⁸ Although not as direct as a car accident or a slip-and-fall
 11 case, this causal chain is still a "direct sequence" and a logical, substantial and
 12 foreseeable cause of the County's injury.⁵⁴⁹

13 797. Specifically, the RICO Diversion Defendants' predicate acts and
 14 pattern of racketeering activity caused the opioid epidemic which has injured the
 15 County in the form of substantial losses of money and property that logically,
 16 directly and foreseeably arise from the opioid-addiction epidemic. The County's
 17 injuries, as alleged throughout this complaint, and expressly incorporated herein
 18 by reference, include:

- 19 a. Losses caused by purchasing and/or paying reimbursements for the
 20 RICO Defendants' prescription opioids, that The County would not have
 21 paid for or purchased but for the RICO Diversion Defendants' conduct;
- 22 b. Losses caused by the decrease in funding available for The County's
 23 public services for which funding was lost because it was diverted to
 24 other public services designed to address the opioid epidemic;

25
 26 ⁵⁴⁷ *City of Everett v. Purdue Pharma L.P.*, 2017 WL 4236062, *6 (W.D. Wash.
 27 Sept. 25, 2017).

28 ⁵⁴⁸ *Id.*

29 ⁵⁴⁹ *Id.*

- 1 c. Costs for providing healthcare and medical care, additional therapeutic,
- 2 and prescription drug purchases, and other treatments for patients
- 3 suffering from opioid-related addiction or disease, including overdoses
- 4 and deaths;
- 5 d. Costs of training emergency and/or first responders in the proper
- 6 treatment of drug overdoses;
- 7 e. Costs associated with providing police officers, firefighters, and
- 8 emergency and/or first responders with Naloxone – an opioid antagonist
- 9 used to block the deadly effects of opioids in the context of overdose;
- 10 f. Costs associated with emergency responses by police officers,
- 11 firefighters, and emergency and/or first responders to opioid overdoses;
- 12 g. Costs for providing mental-health services, treatment, counseling,
- 13 rehabilitation services, and social services to victims of the opioid
- 14 epidemic and their families;
- 15 h. Costs for providing treatment of infants born with opioid-related medical
- 16 conditions, or born addicted to opioids due to drug use by mother during
- 17 pregnancy;
- 18 i. Costs associated with law enforcement and public safety relating to the
- 19 opioid epidemic, including but not limited to attempts to stop the flow of
- 20 opioids into local communities, to arrest and prosecute street-level
- 21 dealers, to prevent the current opioid epidemic from spreading and
- 22 worsening, and to deal with the increased levels of crimes that have
- 23 directly resulted from the increased homeless and drug-addicted
- 24 population;
- 25 j. Costs associated with increased burden on the County's judicial system,
- 26 including increased security, increased staff, and the increased cost of
- 27 adjudicating criminal matters due to the increase in crime directly
- 28 resulting from opioid addiction;

- k. Costs associated with providing care for children whose parents suffer from opioid-related disability or incapacitation;
 - l. Loss of tax revenue due to the decreased efficiency and size of the working population in Plaintiffs' Community;
 - m. Losses caused by diminished property values in neighborhoods where the opioid epidemic has taken root; and
 - n. Losses caused by diminished property values in the form of decreased business investment and tax revenue.

9 798. The County's injuries were proximately caused by Defendants'
10 racketeering activities because they were the logical, substantial and foreseeable
11 cause of The County's injuries. But for the opioid-addiction epidemic created by
12 Defendants' conduct, The County would not have lost money or property.

13 799. The County's injuries were directly caused by the RICO Diversion
14 Defendants' pattern of racketeering activities.

15 800. The County is most directly harmed and there is no other Plaintiff
16 better suited to seek a remedy for the economic harms at issue here.

17 801. Plaintiff seeks all legal and equitable relief as allowed by law,
18 including *inter alia* actual damages, treble damages, equitable relief, forfeiture as
19 deemed proper by the Court, attorney's fees and all costs and expenses of suit and
20 pre- and post-judgment interest

COUNT V

FALSE ADVERTISING

Violations of California Business and Professions Code section 17500, et seq.
(Against All Defendants)

25 802. Plaintiff, The People, incorporate by reference all other paragraphs of
26 this Complaint as if fully set forth here, and further alleges as follows.

1 803. This Count is brought by the People of the State. This Count is
2 brought pursuant to Sections 17535 and 17536 of the California Business and
3 Professions Code for injunctive relief, restitution and civil penalties.

4 804. Section 17500 of the California Business and Professions Code
5 makes it “unlawful for any person, . . . corporation . . . with intent directly or
6 indirectly to dispose of real or personal property . . . or to induce the public to
7 enter into any obligation relating thereto, to make or disseminate or cause to be
8 made or disseminated before the public in this state, . . . in any . . . manner or
9 means whatever . . . any statement, concerning that real or personal property . . .
10 which is untrue or misleading, and which is known, or which by the exercise of
11 reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof.
12 Code § 17500.

13 805. As described above in allegations expressly incorporated herein, at
14 all times relevant to this Complaint, Defendants directly and indirectly violated
15 Section 17500 by making and disseminating untrue, false and misleading
16 statements about, *inter alia*, the use of opioids for chronic pain, about the risks of
17 addiction related to opioids, about the signs of addiction and how to reliably
18 identify and safely prescribe opioids to patients predisposed to addiction, and
19 about their so-called abuse-deterring opioid formulations. Defendants also
20 repeatedly failed to disclose material facts about the risks of opioids.

21 806. The Manufacturer Defendants also made untrue, false, and
22 misleading statements that included, but were not limited to:

23 807. Claiming or implying that opioids would improve patients’ function
24 and quality of life;

25 808. Claiming that opioids should be used to treat chronic pain and that
26 there was a significant upside to long-term opioid use;

27 809. Mischaracterizing the risk of opioid addiction and abuse, including
28 by stating or implying the opioids were rarely addictive, that “steady state” and

1 abuse-resistant properties meant the drugs were less likely to be addictive or
2 abused, and that specific opioid drugs were less addictive or less likely to be
3 abused than other opioids;

4 810. Claiming or implying that addiction can be avoided or successfully
5 managed through the use of screening and other tools and exaggerating the
6 effectiveness of screening tools to prevent addiction;

7 811. Promoting the misleading concept of pseudoaddiction, thus
8 concealing the true risk of addiction, and advocating that the signs of addiction
9 should be treated with more opioids;

10 812. Mischaracterizing the difficulty of discontinuing opioid therapy,
11 including by mischaracterizing the prevalence and severity of withdrawal
12 symptoms, and claiming that opioid dependence and withdrawal are easily
13 managed;

14 813. Claiming of implying that increased doses of opioids pose no
15 significant additional risk;

16 814. Misleadingly depicting the safety profile of opioids prescribed by
17 minimizing their risks and adverse effects while emphasizing or exaggerating the
18 risks of competing products, including NSAIDs; and

19 815. In the case of Purdue, mischaracterizing OxyContin's onset of action
20 and duration of efficacy to imply that the drug provided a full 12 hours of pain
21 relief.

22 816. The Manufacturer Defendants made deceptive representations to the
23 public about the use of opioids to treat chronic non-cancer pain. Each
24 Manufacturer Defendant also omitted or concealed material facts and failed to
25 correct prior misrepresentations and omissions to the public about the risks and
26 benefits of opioids. Each Defendant's omissions rendered even their seemingly
27 truthful statements about opioids deceptive.

28

1 817. Defendants' conduct was likely to mislead or deceive The People and
2 Plaintiffs' Community, including Californians who purchased or covered or paid
3 for the purchase of opioids for chronic pain.

4 818. Each Manufacturer Defendant has conducted, and has continued to
5 conduct, a widespread marketing scheme designed to promote opioids and
6 persuade doctors and patients that opioids can and should be used for chronic
7 pain, resulting in opioid treatment for a far broader group of patients who are
8 much more likely to become addicted and suffer other adverse effects from the
9 long-term use of opioids. In connection with this scheme, each Manufacturer
10 Defendant spent, and continues to spend, millions of dollars on promotional
11 activities and materials that falsely deny or trivialize the risks of opioids while
12 overstating the benefits of using them for chronic pain. This conduct tends to
13 mislead or deceive, and has misled and deceived, The People and Plaintiffs'
14 Community.

15 819. The Manufacturer Defendants have disseminated these common
16 messages to reverse the popular and medical understanding of opioids and risks of
17 opioid use. They disseminated these messages directly, through their sales
18 representatives, in speaker groups led by physicians the Manufacturer Defendants
19 recruited for their support of their marketing messages, and through unbranded
20 marketing and industry-funded front groups.

21 820. Pursuant to Section 17535 of the California Business and Professions
22 Code, The People request an order from this Court enjoining Defendants from any
23 further violations of the California False Advertising law, California Business and
24 Professions Code §§ 17500 *et seq.*

25 821. Pursuant to Section 17535 of the California Business and Professions
26 Code, the People request restitution of any money acquired by Defendants'
27 violations of the California False Advertising law, California Business and
28 Professions Code §§ 17500 *et seq.*

1 822. Pursuant to Section 17536 of the California Business and Professions
2 Code, The People request an order assessing a civil penalty of two thousand five
3 hundred dollars (\$2,500) against Defendants for each violation of the California
4 False Advertising law, California Business and Professions Code §§ 17500 *et seq.*

COUNT VI

NEGLIGENCE MISREPRESENTATION

(Against All Defendants)

8 823. Plaintiff, The County, incorporates by reference all other paragraphs
9 of this Complaint as if fully set forth here, and further alleges as follows.

10 824. The County seeks economic damages which were the foreseeable
11 result of the Defendants' intentional and/or unlawful actions and omissions.

12 825. California classifies negligent misrepresentation as a species of fraud
13 or deceit for which economic losses are recoverable. *Kalitta Air, L.L.C. v. Cent.*
14 *Texas Airborne Sys., Inc.*, 315 F. App'x 603, 607 (9th Cir. 2008) (citing *Bily v.*
15 *Arthur Young & Co.*, 3 Cal. 4th 370, 11 Cal. Rptr. 2d 51, 834 P.2d 745, 768
16 (1992)).

17 826. The elements of negligent misrepresentation in California are that the
18 defendant: (1) made a misrepresentation of a past or existing material fact, (2)
19 without reasonable grounds for believing it to be true, (3) with the intent to induce
20 another's reliance on the misrepresentation, (4) justifiable reliance on the
21 misrepresentation, and (5) resulting damage. *Wells Fargo Bank, N.A. v. FSI, Fin.*
22 *Sols., Inc.*, 196 Cal. App. 4th 1559, 1573, 127 Cal. Rptr. 3d 589, 600 (2011); *Fox*
23 *v. Pollack*, 181 Cal. App. 3d 954, 962, 226 Cal. Rptr. 532, 536–37 (Ct. App.
24 1986). Negligent misrepresentation “encompasses ‘[t]he assertion, as a fact, of
25 that which is not true, by one who has no reasonable ground for believing it to be
26 true.’” *Small v. Fritz Companies, Inc.*, 30 Cal. 4th 167, 173–74, 65 P.3d 1255,
27 1258 (2003) (citing Cal. Civ. Code § 1710(2)).

1 827. As described elsewhere in this Complaint in allegations expressly
2 incorporated herein, Distributor Defendants misrepresented their compliance with
3 their duties under the law and concealed their noncompliance and shipments of
4 suspicious orders of opioids to Plaintiffs' Community and destinations from
5 which they knew opioids were likely to be diverted into Plaintiffs' Community, in
6 addition to other misrepresentations alleged and incorporated herein.

7 828. As described elsewhere in the Complaint in allegations expressly
8 incorporated herein, Manufacturer Defendants breached their duties to exercise
9 due care in the business of pharmaceutical manufacturers of dangerous opioids,
10 which are Schedule II Controlled Substances, by misrepresenting the nature of the
11 drugs and aggressively promoting them for chronic pain for which they knew the
12 drug were not safe or suitable.

13 829. The Manufacturer Defendants misrepresented and concealed the
14 addictive nature of prescription opioids and their lack of suitability for chronic
15 pain, in addition to other misrepresentations alleged and incorporated herein.

16 830. All Defendants breached their duties to prevent diversion and report
17 and halt suspicious orders, and they misrepresented their compliance with their
18 legal duties. Defendants knew or should have known that the representations they
19 were making were untrue because they did not have reasonable grounds for
20 believing their statements to be true.

21 831. Defendants made these false representations and concealed facts with
22 knowledge of the falsity of their representations, or without reasonable grounds
23 for believing them to be true, and did so with the intent of inducing reliance by
24 The County, Plaintiffs' Community, the public, and persons on whom The County
25 relied.

26 832. These false representations and concealments were reasonably
27 calculated to deceive The County, Plaintiffs' Community, and the physicians who
28 prescribed opioids for persons in Plaintiffs' Community, were made with the

1 intent of inducing reliance, and did in fact deceive these persons, The County, and
2 Plaintiffs' Community.

3 833. The County, Plaintiffs' Community, and the physicians who
4 prescribed opioids reasonably relied on these false representations and
5 concealments of material fact

6 834. The County justifiably relied on Defendants' representations and/or
7 concealments, both directly and indirectly. This reliance proximately caused The
8 County's injuries.

9 835. The causal connection between the Defendants' breaches of their
10 duties and misrepresentations and the ensuing harm was entirely foreseeable.

11 836. As described above in allegations expressly incorporated herein,
12 Defendants' breaches of duty and misrepresentations caused, bear a causal
13 connection with and/or proximately resulted in the damages sought herein.

14 837. The Defendants' breaches of their duties and misrepresentations were
15 the cause-in-fact of The County's injuries.

16 838. The risk of harm to The County and Plaintiffs' Community and the
17 harm caused should have been reasonably foreseen by Defendants. The
18 Defendants' conduct was substantial factor in causing The County's injuries.

19 839. The Defendants were selling dangerous drugs statutorily categorized
20 as posing a high potential for abuse and severe dependence. The Defendants
21 knowingly traded in drugs that presented a high degree of danger if prescribed
22 incorrectly or diverted to other than medical, scientific, or industrial channels.
23 However, the Defendants misrepresented what their duties were and their
24 compliance with their legal duties.

25 840. The Defendants failed to disclose the material facts that *inter alia*
26 they were not in compliance with laws and regulations requiring that they
27 maintain a system to prevent diversion, protect against addiction and severe harm,
28 and specifically monitor, investigate, report, and refuse suspicious orders. But for

1 these material factual omissions, the Defendants would not have been able to sell
2 opioids.

3 841. As alleged herein, each Manufacturer Defendant wrongfully
4 represented that the opioid prescription medications they manufactured, marketed
5 and sold had characteristics, uses or benefits that they do not have. The
6 Manufacturer Defendants also wrongfully misrepresented that the opioids were
7 safe and effective when the Manufacturer Defendants knew, or should have
8 known, such representations were untrue, false and misleading.

9 842. Because of the dangerously addictive nature of these drugs, which the
10 Manufacturer Defendants concealed and misrepresented, they lacked medical
11 value and in fact caused addiction and overdose deaths.

12 843. The Manufacturer Defendants made deceptive representations about
13 the use of opioids to treat chronic non-cancer pain. Each Manufacturer Defendant
14 also omitted or concealed material facts and failed to correct prior
15 misrepresentations and omissions about the risks and benefits of opioids. Each
16 Defendant's omissions rendered even their seemingly truthful statements about
17 opioids deceptive.

18 844. The Defendants' unlawful and/or intentional actions create a
19 rebuttable presumption of negligent misrepresentation under State law.

20 845. The County seeks economic losses (direct, incidental, or
21 consequential pecuniary losses) resulting from the Defendants' actions and
22 omissions.

23 846. The County seeks all legal and equitable relief as allowed by law,
24 other than such damages disavowed herein, including *inter alia* injunctive relief,
25 restitution, disgorgement of profits, compensatory and punitive damages, and all
26 damages allowed by law to be paid by the Defendants, attorney fees and costs, and
27 pre- and post-judgment interest.

28

COUNT VII
FRAUD AND FRAUDULENT MISREPRESENTATION
(Against All Defendants)

847. Plaintiff, The County, incorporates by reference all other paragraphs of this Complaint as if fully set forth here, and further alleges as follows.

6 848. In California, the tort of fraud or intentional misrepresentation has
7 five elements: ““The elements of fraud, which gives rise to the tort action for
8 deceit, are (a) misrepresentation (false representation, concealment, or
9 nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e.,
10 to induce reliance; (d) justifiable reliance; and (e) resulting damage.”” *Small v.*
11 *Fritz Companies, Inc.*, 30 Cal. 4th 167, 173–74, 65 P.3d 1255, 1258 (2003) (citing
12 *Lazar v. Superior Court*, 12 Cal. 4th 631, 638, 49 Cal. Rptr. 2d 377, 909 P.2d 981
13 (1996)).

14 849. Section 1709 of the California Civil Code provides: "Fraudulent
15 deceit. One who willfully deceives another with intent to induce him to alter his
16 position to his injury or risk, is liable for any damage which he thereby suffers."
17 Cal. Civ. Code. § 1709.

18 850. Section 1710 of the California Civil Code provides: "Deceit, what. A
19 deceit, within the meaning of the last section, is either: 1. The suggestion, as a
20 fact, of that which is not true, by one who does not believe it to be true; . . . 3.

The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact.” Cal. Civ. Code. §§ 1710(1) & (3). “In California, the elements of the misrepresentation torts (which are also denominated forms of “deceit”) are prescribed by statute . . . and our common law tradition.” *Bily v. Arthur Young & Co.*, 3 Cal. 4th 370, 414, 834 P.2d 745 (1992) (citing Cal. Civ. Code § 1710).

27 851. Defendants violated their general duty not to actively deceive, have
28 made knowingly false statements and have omitted and/or concealed information

1 which made statements Defendants did make knowingly false. Defendants acted
2 intentionally and/or unlawfully.

3 852. As alleged herein, Defendants made false statements regarding their
4 compliance with state and federal law regarding their duties to prevent diversion,
5 their duties to monitor, report and halt suspicious orders, and/or concealed their
6 noncompliance with these requirements.

7 853. As alleged herein, the Manufacturer Defendants engaged in false
8 representations and concealments of material fact regarding the use of opioids to
9 treat chronic, non-cancer pain.

10 854. As alleged herein, the Defendants knowingly and/or intentionally
11 made representations that were false. Defendants had a duty to disclose material
12 facts and concealed them. These false representations and concealed facts were
13 material to the conduct and actions at issue. Defendants made these false
14 representations and concealed facts with knowledge of the falsity of their
15 representations, and did so with the intent of misleading The County, Plaintiffs'
16 Community, the public, and persons on whom The County relied.

17 855. These false representations and concealments were reasonably
18 calculated to deceive The County, Plaintiffs' Community, and the physicians who
19 prescribed opioids for persons in Plaintiffs' Community, were made with the
20 intent to deceive and induce reliance, and did in fact deceive these persons, The
21 County, and Plaintiffs' Community.

22 856. The County, Plaintiffs' Community, and the physicians who
23 prescribed opioids reasonably relied on these false representations and
24 concealments of material fact.

25 857. The County justifiably relied on Defendants' representations and/or
26 concealments, both directly and indirectly. The County's injuries were
27 proximately caused by this reliance.

28

1 858. The injuries alleged by The County herein were sustained as a direct
2 and proximate cause of the Defendants' fraudulent conduct.

3 859. The County seeks economic losses (direct, incidental, or
4 consequential pecuniary losses) resulting from Defendants' fraudulent activity,
5 including fraudulent misrepresentations and fraudulent concealment.

6 860. The County seeks all legal and equitable relief as allowed by law,
7 except as expressly disavowed herein, including *inter alia* injunctive relief,
8 restitution, disgorgement of profits, compensatory damages and punitive damages,
9 and all damages allowed by law to be paid by the Defendants, attorney fees and
10 costs, and pre- and post-judgment interest.

COUNT VIII

UNJUST ENRICHMENT

(Against All Defendants)

14 861. Plaintiff, The County, incorporates by reference all other paragraphs
15 of this Complaint as if fully set forth herein, and further alleges as follows.

16 862. Defendants have unjustly retained a benefit to The County's
17 detriment, and the Defendants' retention of the benefit violates the fundamental
18 principles of justice, equity, and good conscience. *Peterson v. Cellco Partnership*,
19 164 Cal. App. 4th 1583, 1593, 80 Cal. Rptr. 3d 316, 323 (2008); *Lectrodryer v.*
20 *SeoulBank*, 77 Cal. App. 4th 723, 726, 91 Cal. Rptr. 2d 881 (2000).

21 863. As an expected and intended result of their conscious wrongdoing as
22 set forth in this Complaint, Defendants have profited and benefited from the
23 increase in the distribution and purchase of opioids within Plaintiffs' Community,
24 including from opioids foreseeably and deliberately diverted within and into
25 Plaintiffs' Community.

26 864. Unjust enrichment arises not only where an expenditure by one party
27 adds to the property of another, but also where the expenditure saves the other
28 from expense or loss.

1 865. The County has expended substantial amounts of money in an effort
2 to remedy or mitigate the societal harms caused by Defendants' conduct.

3 866. These expenditures include the provision of healthcare services and
4 treatment services to people who use opioids.

5 867. These expenditures have helped sustain Defendants' businesses.

6 868. The County has conferred a benefit upon Defendants by paying for
7 Defendants' externalities: the cost of the harms caused by Defendants' improper
8 distribution practices.

9 869. Defendants were aware of these obvious benefits, and their retention
10 of the benefit is unjust.

11 870. The County has paid for the cost of Defendants' externalities and
12 Defendants have benefited from those payments because they allowed them to
13 continue providing customers with a high volume of opioid products. Because of
14 their deceptive marketing of prescription opioids, Manufacturer Defendants
15 obtained enrichment they would not otherwise have obtained. Because of their
16 conscious failure to exercise due diligence in preventing diversion, Defendants
17 obtained enrichment they would not otherwise have obtained. The enrichment
18 was without justification and the County lacks a remedy provided by law.

19 871. Defendants have unjustly retained benefits to the detriment of the
20 County, and Defendants' retention of such benefits violates the fundamental
21 principles of justice, equity, and good conscience.

22 872. Defendants' misconduct alleged in this case is ongoing and
23 persistent.

24 873. Defendants' misconduct alleged in this case does not concern a
25 discrete event or discrete emergency of the sort a political subdivision would
26 reasonably expect to occur, and is not part of the normal and expected costs of a
27 local government's existence. The County alleges wrongful acts which are neither
28 discrete nor of the sort a local government can reasonably expect.

1 874. The County has incurred expenditures for special programs over and
2 above its ordinary public services.

3 875. In addition, the County has made payments for opioid prescriptions,
4 and Defendants benefitted from those payments. Because of their deceptive
5 promotion of opioids, Defendants obtained enrichment they would not otherwise
6 have obtained. The enrichment was without justification and The County lacks a
7 remedy provided by law.

8 876. By reason of Defendants' unlawful acts, The County has been
9 damaged and continues to be damaged, in a substantial amount to be determined
10 at trial.

11 877. The County seeks an order compelling Defendants to disgorge all
12 unjust enrichment to the County; and awarding such other, further, and different
13 relief as this Honorable Court may deem just.

PUNITIVE DAMAGES

15 878. Plaintiffs incorporate by reference all other paragraphs of this
16 Complaint as if fully set forth herein, and further alleges as follows.

17 879. By engaging in the above-described intentional and/or unlawful acts
18 or practices, Defendants acted maliciously towards Plaintiffs and with an
19 intentional disregard of the Plaintiffs' rights and the safety of Plaintiffs'
20 Community. Defendants acted oppressively, with conscious disregard for the
21 rights of others and/or in a reckless, wanton, willful or grossly negligent manner.
22 Defendants acted with a prolonged intentional disregard to the adverse
23 consequences of their actions and/or omissions. Defendants acted with a
24 conscious disregard for the rights and safety of others in a manner that had a great
25 probability of causing substantial harm. Defendants acted toward The County with
26 malice and were grossly negligent in failing to perform the duties and obligations
27 imposed upon them under applicable federal and state statutes and common law.

1 880. Defendants also committed fraud by knowingly and intentionally
2 making representations that were false. Defendants had a duty to disclose material
3 facts and concealed them. These false representations and concealed facts were
4 material to the conduct and actions at issue.

5 881. Defendants were selling and/or manufacturing dangerous drugs
6 statutorily categorized as posing a high potential for abuse and severe dependence.
7 Thus, Defendants knowingly traded in drugs that presented a high degree of
8 danger if prescribed incorrectly or diverted to other than legitimate medical,
9 scientific or industrial channels. Because of the severe level of danger posed by,
10 and indeed visited upon the State and Plaintiffs' Community by, these dangerous
11 drugs, Defendants owed a high duty of care to ensure that these drugs were only
12 used for proper medical purposes. Defendants chose profit over prudence and the
13 safety of the community, and an award of punitive damages is appropriate as
14 punishment and a deterrence. Punitive damages should be awarded pursuant to the
15 common law and Cal. Civ. Code § 3294.

16 882. By engaging in the above-described wrongful conduct, Defendants
17 also engaged in willful misconduct and gross negligence and exhibited an entire
18 want of care that would raise the presumption of a conscious indifference to
19 consequences.

RELIEF

21 **WHEREFORE**, Plaintiffs respectfully pray that this Court grant the following
22 relief:

23 883. Entering Judgment in favor of The County in a final order against
24 each of the Defendants;

25 884. Declare that Defendants have created a public nuisance in violation
26 of California Civil Code Sections 3479 and 3480;

27 885. Enjoin the Defendants from performing any further acts in violation
28 of California Civil Code Sections 3479 and 3480;

1 886. Order Defendants to fund an “abatement fund” on behalf of The
2 People for the purposes of prospectively abating the ongoing opioid nuisance;

3 887. Order that Defendants compensate The County for damages to its
4 property due to the ongoing public nuisance caused by the opioid epidemic;

5 888. Awarding actual damages, treble damages, injunctive and equitable
6 relief, and forfeiture as deemed proper by the Court, and attorney fees and all
7 costs and expenses of suit pursuant to The County’s racketeering claims;

8 889. Declare that Defendants have made, disseminated as part of a plan or
9 scheme, or aided and abetted in the dissemination of false and misleading
10 statements in violation of the California False Advertising Act;

11 890. Enjoining the Defendants and their employees, officers, directors,
12 agents, successors, assignees, merged or acquired predecessors, parent or
13 controlling entities, subsidiaries, and all other persons acting in concert or
14 participation with it, from engaging in false advertising in violation of the
15 California False Advertising Act and ordering a temporary, preliminary or
16 permanent injunction;

17 891. Order Defendants to pay restitution to The People of any money
18 acquired by Defendants’ false and misleading advertising, pursuant to the
19 California False Advertising Act;

20 892. Order Defendants to pay civil penalties to The People of two
21 thousand five hundred dollars (\$2,500) for each act of false and misleading
22 advertising, pursuant to Section 17536 of the California False Advertising Act;

23 893. Awarding The County the damages caused by the opioid epidemic,
24 and their negligent misrepresentations, fraud and deceit, including (A) costs for
25 providing medical care, additional therapeutic and prescription drug purchases,
26 and other treatments for patients suffering from opioid-related addiction or
27 disease, including overdoses and deaths; (B) costs for providing treatment,
28 counseling, and rehabilitation services; (C) costs for providing treatment of infants

1 born with opioid-related medical conditions; (D) costs for providing care for
2 children whose parents suffer from opioid-related disability or incapacitation; and
3 (E) costs associated with law enforcement and public safety relating to the opioid
4 epidemic;

5 894. Enter a judgment against the Defendants requiring Defendants to pay
6 punitive damages to Plaintiffs;

7 895. Granting The County:

- 8 1. The cost of investigation, reasonable attorneys' fees, and all costs and
9 expenses;
- 10 2. Pre-judgment and post-judgment interest; and,
- 11 3. All other relief as provided by law and/or as the Court deems
12 appropriate and just.

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14 Dated: May 9, 2018

RESPECTFULLY SUBMITTED:

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28 THE PEOPLE OF THE STATE OF
CALIFORNIA, COUNTY OF
NEVADA, By Alison Barratt-Green,
OFFICE OF THE COUNTY
COUNSEL,
NEVADA COUNTY, CALIFORNIA,
Plaintiffs

/s/ Alison Barratt-Green

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